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MANUAL

OF

LAND ACQUISITION

PRACTICE AND PROCEDURE.

BY

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Price Rs. 5.

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CALCUTTA:
BUTTERWORTH & CO. (INDIA), LTD., 6A, HASTINGS ST.

WINNIPEG:
BUTTERWORTH & Co (Canada), Ltd.

SYDNEY:
BUTTERWORTH & Co. (Australia), Ltd.

LONDON:
BUTTERWORTH & CO., BELL YARD, TEMPLE BAR
LAW PUBLISHERS.

333.1
P 485

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Preface.

As I have stated in the introduction this book is not intended as a serious contribution to the existing treatises on the law of Land Acquisition in British India. It deals almost entirely with the procedure before the Collector, the methods of valuation that may be adopted by him, and the principles on which these are based. India, following in the footsteps of Europe, is on the threshold of a great development in town improvement and town planning, and in the next fifty years very large sums of public money will be spent on acquisition for these purposes. It is vitally important, therefore, that some scientific system of valuation should be adopted by the officers who will have to spend this money, and that this should be accepted by the Courts of appeal and the public. I have endeavoured, however inadequately, to set forth the outlines of such a system in this book and to show its working in actual practice. I have also given in detail an account of the actual working of a large acquisition office. I must acknowledge the very great debt which this book owes to Rai Banshidhar Banarji Bahadur, C.I.E., Second Land Acquisition Collector, Calcutta, who has most generously placed at my service his unrivalled knowledge and experience of land acquisition practice and principles.

CONTENTS.

	Pages.
I.—Manual of Land Acquisition	1-72

	Paras.
Introduction	1
Position of Collector	2-5
Preliminary enquiries	6
Estimates	7
Draft declaration	8
Declaration	9
Measurement	10
Notices	11-13
Claims	14, 15
Enquiry	16
Evidence	16
Award	17
Government revenue	18
Delay in award	19
Preliminary valuation	20
Reasons for award	21
Compensation	22
Market value	23
Rental valuation	24-27
Deductions from the rent	28
Years' purchase	29-31
Vacant land	32
Agricultural land	33
Potential value	34
Trees, etc.	34
Land and Buildings	35
Roads, ferries, etc.	36
Hypothetical building schemes and plotting schemes	37
Additions to and deductions from the compensation	37
Damages for crops	38
,, severance	39
,, loss of earnings	40
,, removal	41
,, resulting from the declaration	42
Statutory allowance	43
Effect of award	44

PARAS.

Notice of award 45
Apportionment 46
Tenants' rights 47, 48
Production of evidence 49
Possession 50
Urgent possession 51
Payment 52. 53
Persons incompetent to alienate 54
Hindu females 55
Minors and Guardians 56
Trustees 57
Practice in making payments 58, 59
Payment by exchange 60
Payment of Government revenue 61
Reinvestment 62
eference 63
ars to reference 64, 65
ppeal from Collector's order 66
eference section 30 69
Other references, ... 70
Temporary occupation 71
Acquisition for companies 72
Office routine 73
Registers and returns 74
Forms of notice 75
Statistics 76
Inspection 77-80

PAGES.

II.—ACT I OF 1884 73-96
III.—ACT XVIII OF 1885. 97-103
IV.—EXTRACTS FROM BENGAL ACT V OF 1911 RELATING TO THE COMPULSORY ACQUISITION OF LAND . . . 104-118
V.—ACT XVIII OF 1911 119
VI.—APPENDIX I—EXEMPTION OF PROPERTY UNDER SECTION 78, BENGAL ACT V OF 1911 121
VII.—APPENDIX II—RULINGS OF THE SPECIAL TRIBUNAL . 125
VIII.—APPENDIX III—FORMS, EXAMPLES, AND STATISTICS . . 138
IX.—TABLES 152

A MANUAL OF LAND ACQUISITION PRACTICE AND PROCEDURE.

Introduction.

1. The existing manuals and treatises on the law of Land Acquisition deal mainly with the procedure before the Courts and the difficulties that may arise there. Experience shows however that nine-tenths of the cases in Land Acquisition work are settled before the Collector without reference to the Court, and as to the procedure before the Collector the existing treatises give very little information. It is this procedure that is dealt with in this manual, and parties or pleaders wishing to learn how a claim should be framed, or when and how they will obtain payment, or the reasons for which it may be refused, and questions of a similar nature will be able to discover this here easily enough. I have also explained at considerable length the difficulties that may arise before the Collector and my entire method of valuation. And I hope that Collectors and other officers employed in land acquisition will find much practical matter dealing with office routine and valuation that may assist them in what must always be an extremely difficult question.

This manual is, therefore, intended for the use of officers entrusted with the work of Land Acquisition and for the public. It deals more with ordinary practice such as the preparation of estimates and valuations, with claims, payments and references, etc., than with intricate points of law. It is not to be regarded as a serious contribution to the existing treatises on the law of Land Acquisition which are intended primarily for the use of lawyers. At the same time I have included in it such difficulties as have arisen in my own practice and have stated what I understand to be the law. I have throughout used the word "Collector" as meaning an officer acting as Collector under Act I of 1894. When the District Collector is meant, I have used the expression "Collector of the District."

Position of Collector.

2. All compulsory acquisition in Bengal is carried out by the authority of Government. The Collector under the Act is always either the Collector of a district or an officer specially empowered by Government. The Collectors are, therefore, Government

officers. Even when lands are acquired for Railways, local bodies such as the Calcutta Improvement Trust, municipalities and district boards, or public companies, the land is acquired by Government and after acquisition is handed over to the local body or company concerned. The Collectors are, therefore, entirely independent of the local body which acquires the land. The only exception is in the case of the Calcutta Corporation where the Chairman is also a Collector under Act I of 1894. In fact, however, the acquisition for the Corporation is made by the Collectors of Land Acquisition, Calcutta, who are practically independent of the Corporation.

3. Throughout the acquisition proceedings the Collector acts as the agent of Government. The enquiry before him is not a judicial proceeding and his award is merely an offer. This has been clearly decided in the case of Ezra *versus* The Secretary of State, I. L. R. 32, Calc. 605. This case which was decided by the Privy Council is the ruling case in all questions of Land Acquisition Procedure. The Collector's position is thus somewhat anomalous. As he is not acting judicially he is not bound by the evidence produced before him, and in framing his award he is entitled to consider and to make use of information of which the parties have no knowledge. This at first sight appears somewhat unfair to them. But it is really greatly to the advantage of the very large number of persons who are unable to afford the expense of expert valuers and who are satisfied with a fair price without the expense and trouble of proceedings before a Court. The Collector is usually an officer of considerable experience in valuation work and has no personal interest either way as to the price to be paid for the land. His expert knowledge, which is acquired by continual enquiries and from a mass of evidence which no private expert could possibly collect is really placed at the service of the public. It is his business to see that the public get a fair price for the land and that Government does not pay too high a price for it. This is the view of the Collector's position which has always been taken in Bengal.

4. In Bombay a different view has been taken. The Special Collector who acquires for the Improvement Trust there is regarded as an arbitrator who is entirely ignorant and who proceeds upon the evidence put in before him in each case. This system may work well enough where the acquisition is on behalf

of a body possessing a staff of expert valuers such as the Improvement Trust though even in such acquisitions the system followed in Bengal is fairer to the public. In ordinary acquisition work the Collector would find it impossible to determine the value of land if he merely relied upon the evidence put in by the claimants as in most cases no evidence of any value is adduced. He is therefore compelled to make enquiries for himself.

5. The Collector's award being merely an offer is not final unless the party accepts it. There is a right of appeal to the Civil Court in ordinary cases and to the Special Tribunal in the case of land acquired for the Calcutta Improvement Trust. The Collector can, however, take possession of the land as soon as his award is made. Any additional amount that may be decreed by the Courts will bear interest from the date of his taking possession.

Preliminary enquiries.

6. Sections 4 and 5 of the Act deal with these. Before such enquiries can be made under the Act, a notification must be published by Government in the local gazette stating that the land is likely to be acquired and public notice of the notification must be given by the Collector. In practice it will be found that orders under these sections are seldom issued as such enquiries are usually made informally. If, however, any resistance were offered to enquiries of this nature, power to make them could always be obtained under these sections, and any person obstructing the officer authorized by Government would then be liable to punishment under section 46. In case of obstruction however the officer is not entitled to enter a building or enclosed court or garden without giving at least seven days' notice to the occupier. It is very seldom that any difficulty will be experienced or that the officer will be obstructed. Any damage caused during the enquiry must be paid for. The decision of the Collector of the district as to the amount of such damages is final and any dispute must be referred to him. His enquiry is a summary one and he has no power to take evidence on oath.

Estimates.

7. An estimate of the cost of the proposed acquisition is always required by Government before a project is sanctioned. In urgent cases however a draft declaration may be sent up before the estimate is prepared. This estimate is prepared by the Land Acquisition Collector at the request of the requiring

department or local body before any formal proceedings are taken under the Act. It is of very great importance that this should be carefully prepared as it is upon the Collector's estimate that the acquiring department decides whether the land shall be acquired or not. If the estimate is properly prepared it should rarely be necessary to exceed it The preparation of estimates will be dealt with under the general head of valuation. The Collector is not bound by his own estimates. It is clear that he cannot be bound by these, as when he makes his formal enquiry new facts will be brought to his notice which will affect his valuation. It would be absurd to expect him to enquire formally into a matter which he had already determined. It is therefore possible that he may find his original estimate of the value much too low. The instructions issued by Government in Bengal provide for this. The Collector is required by these to submit a revised estimate after the project has been approved. This revised estimate must be signed by the Collector of the District. If it exceeds Rs. 25,000, it must be countersigned by the Commissioner. If it exceeds Rs. 1,00,000, it must be countersigned by Government. If the revised estimate exceeds the original preliminary estimate by 20 per cent., or if the Collector finds that his awards are likely to exceed his preliminary estimate by 20 per cent., he must without proceeding further inform the requiring authority. This is done in order to give the requiring authority a chance of withdrawing from the acquisition if it considers the project too expensive, just as a private purchaser might withdraw from an agreement to buy if he found that the seller wanted more for the property than he could afford to pay. Similarly if the Collector finds that his preliminary estimate is too high he is not bound to adhere to it, but should award whatever he considers fair.

Draft declaration.

8. Up to this stage the Collector has usually taken no proceedings under the Act. Before any formal proceedings can be taken a declaration must be issued by Government under section 6. A draft of the declaration is always required from the Collector when he submits his estimate. It must contain the area of the land, the district in which it is situated, the purpose for which it is required and the place where a plan of it can be seen. The Act does not require that the boundaries should be given, but in all ordinary cases they are invariably given. When

land is required for a road or railway, etc.. it is sufficient to give the approximate area, length, breadth and the general direction with the names of the districts, parganas and villages through which it passes. In preparing the draft declaration the Collector should see that there are no objections to the acquisition. Mosques, temples, churches, tombs or graveyards should not be included unless this is necessary, and if they are included the fact should be reported and it should be stated whether there is likely to be objection on the part of the public. The question of severance should also be considered. If a property is deprived of all access to a public right-of-way, provision for fresh access should be made. And it will occasionally be cheaper to include the whole of a property than to acquire a small portion of it. Part of a house, manufactory or building, can not be acquired unless the owner agrees to this. If a claim for severance on this ground is excessive, Government can order the acquisition of the entire property without a fresh declaration. If, however, the land originally declared is found to be part of a house and it is decided that the whole should be acquired, a fresh declaration is necessary. All these questions should be considered in drawing up the declaration. The Government instructions require that the estimate should contain a certificate by the Collector to the effect that "the estimate is fair and the rates have been arrived at after local enquiry and inspection of the ground and with reference to the settlement records and road cess papers and the records of the Registration Department." The estimate and draft declaration must also be signed by the Collector of the District and he must certify on the estimate that it is fair and on the draft declaration that there is no objection to the acquisition. It is then sent with a plan to the Commissioner of the Division. If he accepts it, the Commissioner countersigns the estimates and draft declaration if above Rs. 25,000, and if it exceeds Rs 1,00,000, forwards it to Government for countersignature. The declaration and estimate is then sent to the requiring authority. In framing the declaration the Collector will naturally suggest any modification that will save expense.

Section 49.

In the case of temporarily-settled estates the Collector in preparing his estimate should enquire into any claims to mining rights that may be made reporting the result of his enquiries for the orders

of Government who will decide whether these rights should be acquired.

A trifling error in the declaration is not serious, and there is no necessity to revise it unless objection is taken by some person interested. If it is found that additional land is required, a fresh declaration must be published. If more land than is described in the declaration is taken possession of, a private trespass is committed, and Government will be liable for damages, XI, Cal. W. N. pp. 875. But if all the land included within the declaration is not required, Government can be asked to withdraw from the acquisition under section 48. When Government withdraws from the acquisition, a draft notification announcing this is prepared by the Collector.

Land that is already the property of Government cannot be acquired under the Act and should not be declared for acquisition. But where land belonging to Government has been leased out to tenants or where tenants possess structures or other interests in such land these interests can be acquired under the Act. Land that has already been acquired and which has been made over to a company or local body can be acquired again if it is required for a public purpose.

Declaration **9.** The declaration, when published in the gazette, gives public notice of the intended acquisition. It is not open to any person or authority to challenge it or to say that the land is not needed for that purpose or that another piece of land should be taken or that the purpose is not a public purpose. On these points the declaration is conclusive. Once it has issued, all the land included within it must be acquired unless Government withdraws from the acquisition under section 48. This is the general rule, but the Act for the Improvement of Calcutta (Bengal Act V of 1911) provides that the Trust can exempt certain lands. In such cases the acquisition proceedings in respect of these lands are abandoned. This provision is dealt with in Appendix I. Section 6

When Government withdraws from the acquisition, the Collector submits a notification announcing this. When the notification is published in the local gazette, the proceedings are abandoned. In such a case the Collector is bound under section 48 to assess the damage suffered by the owner in consequence of the notice for acquisition and any costs that have been incurred by him and must pay these. Such

damage might be caused by loss of rents or a chance of sale, or by the owner being prevented from building. If the owner does not accept the Collector's assessment of these he can make a reference.

In respect of certain lands which are under acquisition for the Improvement Trust, suits for injunction have been brought by parties against the Collector and the Courts have granted injunctions. It is extremely doubtful whether the Civil Courts can restrain Government from acquiring lands. A Collector will of course obey such injunctions, the responsibility for which must rest with the Courts that issue them. After the declaration is published, Government issues an order to the Collector under section 7 to take order for the acquisition of the land included in it. On receipt of this order, the Collector proceeds to take action under the Act.

Measurement.

10. Section 8 of the Act requires the Collector to mark out the land to measure it and to make a plan of it. Usually the land has already been measured and a plan has been made. In Calcutta the Collector usually proceeds upon the survey map, and in all districts which have been recently surveyed, this is the safest course as there is a legal presumption in favour of the survey map. But, if necessary, the Collector will have a fresh survey made. When this is done, it is important that the parties should be present, as any dispute as to boundaries can be noted at the time. If any person obstructs the Collector in making his survey or destroys or damages any mark placed by him for the purpose, he is liable to punishment under section 46. If the property can be valued upon rental, slight discrepancies as to area are of little importance as they do not affect the total valuation. If the survey map or the areas recorded by the survey are seriously disputed, the claimant should be directed to file a map showing his own measurement along each boundary line and the area extracted. Such a map should always be filed with the claim if the area given in the notice under section 9 is disputed.

Notices.

Sections 9 and 10.

11. The law requires service of the following notices :—

(*i*) Public notice on or near the land under acquisition. This notice describes the land and calls for claims. The Collector may require that the claims should be in writing and he should invariably do so by inserting the words "in writing" in the notice.

(*ii*) Similar notice to be served upon all persons interested in the land of whose interest the Collector has information. Also the Collector may call for a statement from any person interested of the names of all persons interested in the land and of the profits received from the land during the past three years Such notices should invariably be served upon the owner of the land in every case.

Service of notices.

12. Public notice is usually given by beat of drum and the notices after publication are fixed up in or near the land affected. The other notices must be served upon the person named if this is possible. If he cannot be found, the notice is made over to an adult male member of his family residing with him. If this cannot be done, the notice is posted up on the door of his house. Or the notices may be sent by registered post by order of the Collector and service proved by production of the receipt. Section 45

Preparation and issue of Notices.

13. In this office when a large acquisition project is undertaken the various steps up to this point are usually as follows. Before the estimate is framed, the Collector decides the unit of acquisition as it is necessary to subdivide the work. In Calcutta and the suburbs, this is invariably the municipal holding. Elsewhere any similar unit may be adopted which can be conveniently handled The public convenience should be studied in deciding this as far as possible. The project is then divided into blocks and each block is made over to a Surveyor who makes a separate valuation of each premise and at the same time by local enquiry ascertains the names of all persons interested either as landlord or tenant. The names of casual tenants are not taken. But the names of all hut-owners, shop-keepers, tenants holding under a lease, persons carrying on business or trade, and tenants occupying an entire house as a residence are noted. The object is to ascertain the name of every person who may possibly be entitled to compensation either on account of the land, structures or fixtures, or as damages for removal of his residence or business or for loss of earnings. While this enquiry is proceeding copies of the land registers maintained by the Collector of the district and of the municipal assessment roll are procured. The names thus procured both by enquiry and from the land registers are entered on the valuation cards which will be described subsequently. When the orders of Government for the acquisition of the land are received public notice is immediately

issued and served by beat of drum. The issue and service of this notice is recorded on one general order sheet and separate cases are then formed and taken up separately for each premise. A very convenient system of numbering these cases is to assign one serial number to all the premises on the acquisition plan and to give a corresponding number to the separate case regarding this plot. All references to this particular plot and all documents relating to it bear this number. The system is clearly shown in the map of Scheme VII A given in the Appendix. As each separate case is taken up in turn, notices under section 9 are issued upon all persons named in the cards calling for their claims and special notices under section 10 are issued to all landlords. Fifteen clear days excluding the date of service must be allowed to the parties to file their claims and in order to avoid any possible mistake it is usual to allow three weeks.

Claims.

14. On receipt of the notices the parties should file their claims with as little delay as possible and also the statements called for in the special notices. No Court fees are required upon claims under section 19, Act VII of 1870. The public are frequently in doubt as to the proper form of claim.

The following particulars should always be given:

A.—Claim by owner of the land.

1. Name of claimant and share.
2. Names of co-sharers and shares.
3. Abstract of title, *i.e.*, whether inherited or purchased and if purchased when and from whom and for what amount.
4. Details of any mortgage or charge on the land.
5. Rent or profits derived from the land for the past three years. It is as well to give this in the form of a statement showing the names of the tenants and the amount collected. It is possible that the statement may be challenged, and it should therefore be made at the earliest possible date.
6. Whether competent to alienate the land by voluntary sale.
7. Total amount claimed under separate heads, *e.g.*, for land, structures (these will usually be valued jointly), trees, crops, severance, loss of earnings, damages for removal, etc.
8. Whether the area given in the notice is accepted or not.

Documents should be filed in support of these statements, if any exist, and if the area is disputed a map showing the boundaries claimed, the measurement of them, and the area.

B.—Claim by tenant holding under a lease or by tenant with occupancy rights.

1. Name of claimant and share.
2. Name of co-sharer and share.
3. Full description of lease.
4. Rent or profits derived from the land by the claimant during the past three years.
5. Whether the premise is used for residential or business purposes If the latter, the nature of the business should be stated and the annual profits from it.
6. Total amount claimed under separate heads.
7. Description and value of any fixtures owned by claimant.
8. Details of any charge or mortgage on the lease.
9. Whether competent to alienate the right under the lease.

C.—Claim by monthly tenant residing or carrying on business in the premise.

1. Name of claimant and rent paid.
2. Whether residing in the premise or carrying on business.
3. Nature of business if any carried on in the premise and profits for the last year.
4. Description and value of fixtures owned by claimant.
5. Total amount claimed for damages and fixtures separately.

D.—Claim of mortgagee.

1. Name of claimant.
2. Amount of mortgage and rate of interest. Amount remaining unpaid on both accounts up to date of claim.

Unless claims are stated in this precise manner, it is extremely difficult for the Collector to value the respective interests and to apportion the amount awarded between them.

15. When public notice has been duly served it is the duty of every person interested in the land to come before the Collector with his claim. If he does so he is strictly limited by the amount of his claim in his appeal to the Court or Special Tribunal if an appeal is made. If he does not do so, he cannot appeal at all unless the Court or Tribunal finds that he had sufficient reason for not making a claim. Any person required by the Collector to make a statement of the profits derived from the land and of the persons interested in it is liable to be punished under the Penal Code if he does not do so. A dishonestly false statement in a claim would be punishable under section 177 of the Penal Code. This would obviously not apply to an exaggeration or over statement, though parties would do well to avoid these. Very little use is made of these penal sections and the Collector should never apply them unless in a most exceptional case *vide* I. L. R., 27, Calc. 985. Further, although a person aggrieved may sue any person who has been paid by the Collector, the fact that public notice had been duly served and that he had filed no claim would be a sufficient defence for Government in such a suit, as the Collector's award is final and conclusive evidence whether the person interested appears or not and the only appeal against it is by reference to the Court or Tribunal. The Collector should therefore be very careful to see that notices are properly served and the parties should be careful to file their claims within the date fixed. I have seen many cases in which large claims have been barred because the claim has not been filed in time. Even if a notice has not been served upon him personally a party is bound to file his claim if he is aware of the acquisition and of the issue of public notice. When issuing notices, the Collector should also inform any local authority or company for whom the land is being acquired of the date fixed for enquiry and should give it an opportunity of producing evidence.

Legal effect of issue of Notices and of Claims.

A mistake often made by pleaders is that without filing the claim called for, they file an objection to the acquisition either on the ground that the land in question forms part of a house or that for some reason, usually incorrect, the acquisition is illegal or that they propose to have the land exempted under section 78 of the Improvement Trust Act. It is very seldom in the real interests of their clients to object seriously on such grounds. If the objection has any force the

probable result will be either that the irregularity if any exists will be cured by a fresh declaration or in the case of a house that the entire house will ultimately be acquired. And in any case pleaders should be careful to file the claim called for at the same time. If the objection is subsequently over-ruled and no claim has been filed it does not by any means follow that the Court will find that there was a sufficient reason for not filing the claim in time. If it does not come to that finding, the appeal will be barred under section 25 (*2*). It is also not wise to apply to the Collector for time to file a claim either on the ground that an application has been made to the Improvement Trust for exemption under section 78, Act V of 1911 or for any other reason. The Act does not expressly give the Collector power to extend the time and even though he does so it is possible that the Court will not hold that this was sufficient reason for omitting to file the claim by the date fixed though it would probably do so. It is always best to be on the safe side and a claim is a very simple document to prepare.

Enquiry. **16.** When claims have been received and the case is otherwise ready, a date is fixed by the Collector for enquiry. My own practice is to hold two enquiries, the first on the spot when I inspect the land; and the second in my office when I listen to anything the parties may have to say. My procedure is as follows. When the case is ready, notice is issued in the form given in Appendix III informing the persons interested that the Collector will inspect the premise on a given date at a given time. This notice is served on all the persons named in the valuation card and is also posted up on the premise. During this enquiry I note the condition of the structures and the position, etc., of the land. Also I decide on the spot all ordinary claims by tenants for damages, huts, fixtures, etc., and inform them at the time of the amount that will be awarded noting this on the valuation card. Such questions can be decided much more easily on the spot and I do not usually make any further enquiry regarding these matters. The valuation of the land and pucca structures and any questions as to apportionment that may arise are reserved for the subsequent enquiry. At the local enquiry I also enquire into and decide any dispute as to boundaries or area that may have arisen. After this local enquiry from the materials which are now available I make my first rough valuation of the property. Minor questions regarding huts, damages,

etc., and the persons entitled to be paid for them have already been settled at the local enquiry and I do not go into these matters again.

Under the Act all persons claiming an interest in the compensation for the land or an easement over it are persons interested and are entitled to appear before the Collector. The expression is very wide and covers almost every possible case. The local authority or company, if any is concerned, is also entitled to appear, before the Collector. It has usually prepared an independent valuation of the property and I always request that this valuation should be sent to me before I make my local enquiry. Before further enquiry is made, I inform the acquiring body and the party of the amount of my rough valuation and at the same time give both sides notice that I will hold my enquiry at my office on a certain date. This is a distinct variation from the ordinary procedure which has been sanctioned by Government in cases of acquisition for the Improvement Trust only. In my opinion the principle should be adopted in all land acquisition work. If either side accepts the rough estimate as fair it is not necessary for them to do anything further. If they consider it much too low or much too high, they have the opportunity of producing any evidence as to value they can produce. At the same time this rough estimate or draft award is very carefully prepared and unless fresh evidence, of which the Collector had no information, is produced, the parties know that the final award will not differ from it very greatly. As a matter of practice I find that it clears the ground and at once disposes of a great deal of irrelevant and useless discussion and evidence. And it seems only fair that if you ask a man to value his own property you should give him some minimum figure as a basis for discussion. The ordinary owner of property has very little real idea of its market value and it is naturally of great assistance to him if he is told the approximate valuation put upon it by the Collector.

Evidence.

On the date fixed for enquiry I do not record any formal evidence. The Collector is not a judicial officer and he cannot administer an oath. Any oral evidence given before him is therefore of little value Nor is he bound by the Evidence Act and he is therefore entitled to take notice of facts that are not strictly proved. Also he should avoid protracting the enquiry and putting the claimant to heavy costs by

requiring proof according to the strict rules of evidence. It is common experience that in an ordinary civil case the most valuable evidence is documentary and a great deal of the oral evidence adduced in such cases is largely formal proof of the documents adduced. Before a Court an expert's valuation must be proved by his evidence and a deed of sale by the evidence of the persons who witnessed it. But the Collector can accept these without such proof if he considers them genuine. Oral evidence in matters of valuation is practically useless. Before the Courts such evidence is always directed to certain points. It is either used to prove the circumstances of some sale or offer to purchase, or the amount of rent paid or collected, or the situation and advantages of a particular piece of land, or the opinion of some valuer as to the value of land or of the structures or as to the custom of the market. All such questions can be ascertained by the Collector more rapidly and more certainly without the production of oral evidence A sale will be proved before him by the deed itself. If this is a registered document he will usually accept it as proving the sale. If it is alleged that there were special circumstances he can question the parties about these, and can test their statements by local enquiry. An offer will also be proved by a document. If it is not proved by such evidence, it is usually of little value. The Tribunal very rarely if ever accepts oral evidence of such an offer. And even at the best an offer is merely evidence of some person's opinion who is usually not very qualified to judge. The amount of rent actually collected can be better ascertained by actual local enquiry and inspection of receipts than by oral evidence, and the Collector in addition has or should have the rates of rent paid over the entire scheme or project by which he can test such statements. The situation of the land is as well known to the Collector as to the parties and evidence as to this is a mere waste of time. The opinion of a valuer is usually contained in a report with reasons. If necessary the Collector can question the valuer but his formal evidence is hardly required provided his report is of any value. If it is not of any value it is clearly a waste of time to question him upon it. I do not therefore record any formal evidence. There is authority if any were needed for this view of the nature of the Collector's enquiry in I. L. R., Bombay 34. 486. I do however discuss the valuation with the parties and try to

explain to them how I have arrived at my figures and I consider any facts or arguments they put before me. Also I try as far possible to settle the valuation amicably and if there is not much difference between the parties' figure and my own usually succeed in doing so. It is quite impossible for any person to assess the market value of a property with mathematical accuracy and all valuation is therefore largely a matter of compromise. This is particularly noticeable in the Courts. In the Tribunal the Collector's award is practically never upheld. On the other hand the parties' claim is practically never awarded, the valuation almost always being some figure between the two. If the parties desire, they can always insist that the matter should be referred to the Courts for decision. The vast majority of persons, however, prefer to settle the case with the Collector without the worry and delay of legal proceedings.

If the claimant accepts my offer, I make a note of this and take his acceptance in writing on the valuation card and this concludes the enquiry. It is important that during this enquiry all questions regarding valuation should be decided. The amount of costs; damages under any clause of the Act; and all other questions should be settled. At the same time if there is any doubt as to the title, this should be enquired into. But questions as to apportionment are usually decided afterwards unless there is no dispute.

Section 11. **17.** After this enquiry, the award is drawn up. **Award.** The Act prescribes no form for the award. The form used in Bengal was originally prescribed by the Board of Revenue. It is more suited to agricultural land than to property included within a town and many of the headings are usually not filled in. I have given an example of a complete award in the appendix with full details. The Act requires the following particulars :—

(*i*) Area.
(*ii*) The compensation awarded.
(*iii*) The apportionment,

and in the case of acquisition for the Improvement Trust.

(*iv*) The costs.

(*i*) The area will have been settled already by actual measurement. It is very seldom that there are serious disputes as to measurement. In such cases it will usually be found that the dispute is really as to the boundary and not as to the measurement. In two

adjoining plots the total area of which is ten cottas, A will claim seven cottas and B six cottas. This really means that both A and B are claiming the same land. In such a case the Collector should amalgamate the two cases and deal with the two claims as a dispute as to apportionment. If he does not do so he may find that while the one accepts the area of his land as five cottas as found by actual measurement, the other will still claim seven cottas and may get a decision in his favour from the Courts in which case the Collector may have to pay for twelve cottas altogether instead of ten.

(*iii*) At this stage I do not usually apportion the award. If there is any dispute, the case must ultimately go to the Courts for decision, as the Collector has no power to decide it and his decision has no effect. Where the parties agree as to a certain apportionment, this is shown in the award. Where there is clearly a genuine dispute, I make a joint award. Where a claim that is in my opinion clearly frivolous is put in, I award in favour of the person in possession leaving the other to object to payment and to make a reference. In the case of a mortgagee or any other person having a charge on the property I usually make a joint award at this stage as it is impossible to ascertain the exact amount due under the mortgage unless a definite date is fixed and this can be done more easily at the time of payment. In the case of a joint family governed by the Dayabhaga school of law the award is apportioned according to the admitted shares of the members. Where the parties interested are minors—trustees—executors, etc., and the like, the award is framed in the name of the guardians, shebaits, or executors as guardians of their wards or as shebaits of the particular Thakur or as executors of the deceased person.

(*iv*) Costs are only payable in cases where the land is acquired for the Calcutta Improvement Trust. These costs are payable in cases where the parties are not entitled to the 15 per cent. allowance under section 23 (*2*). That is they are only payable in cases where the land acquired is situated in the Calcutta Municipality and within the area comprised in an improvement scheme sanctioned under the Improvement Act, Bengal Act V of 1911. These costs include the legal costs, and the cost of obtaining expert advice.

(*ii*) I deal with the question of compensation in the section dealing with valuation. It may be noted

however, that the Collector should see that all questions of compensation for every possible interest have been decided before his award is drawn up as it is desirable that the award should not be altered or added to afterwards.

Valuation of Government interest in the land.

18. In addition to these particulars the Collector must before making his award, ascertain and record the amount of Government revenue that is paid upon the land acquired under it. The rules dealing with this were made by the Government of Bengal under section 55 of the Act and have the force of law. The procedure is really simple though it is frequently misunderstood. Government possesses a share in all revenue paying land which is represented by the revenue paid for it. This revenue is a first charge on the land and must be paid off before it can be acquired in precisely the same way as a mortgage or other charge must be paid off. When paid off the owner is entitled to a corresponding abatement of revenue. In order to pay off this charge it is necessary to find the capitalized value of the revenue. Where Government is paying for the land, this is deducted from the amount due to the owner. It is really a payment by transfer. Where Government is acquiring for a local body or company, the amount is actually paid by the Collector to the Government, the Secretary of State being shown in the award as a person interested. Where the whole of an estate is acquired, the Government revenue is capitalized at 4 per cent., *i.e.*, 25 times the Government revenue is shown in the award as payable on this account.

Where only a portion of an estate is acquired the Collector has to decide the amount of Government revenue payable upon the portion acquired. It is easy enough to do so. Before making his award, the Collector will ascertain from the revenue authorities the estate in which the land under acquisition is situated, the total revenue payable for it and either—

(1) The assets of the estate if these have been determined within twenty years either by detailed settlement or under the Estates Partition Act, or

(2) The area of the estate.

A simple sum in proportion will give the revenue payable. In the first case it is as follows:—

As the assets of the land acquired are to the total assets of the estate so is the revenue to be capitalized to the total revenue.

In the second :—

As the area acquired is to the area of the estate, so is the revenue to be capitalized to the total revenue. In each case three factors are known and the fourth can be determined. In cases where neither the total assets nor the total area of the estate are known, the Collector will ascertain the gross rental of the land, deduct ten per cent. for collection charges, and take one-fourth of the result as the revenue to be capitalized.

The capitalized value of the revenue should be shown in the award as a deduction from the total value of the owner's interest. The abatement of revenue is also decided by the award. The adjustment of the abatement granted is dealt with under the head of payment. If there is any dispute the parties have the usual right of reference, and in a case where the Collector holds the land to be revenue free and a reference is demanded on the ground that it is revenue paying, the Collector must determine and note the amount of revenue that will be payable if it is found to be revenue paying before making his reference.

Delay in award.

19. Awards should in all cases be made as soon as possible after the declaration. In cases of acquisition for the Improvement Trust if an award has not been made within two years the owner is entitled to compensation under section 48A for any damage caused by the delay. Such damages would in each case be a question of fact, and if the owner does not accept the Collector's decision he is entitled to make a reference to the Tribunal. No compensation is payable however where the delay is due to the fact that the proceedings have been abandoned upon the exemption of the property under section 78, Act V of 1911.

Preliminary valuation.

20. The work of valuation in my office commences with the preparation of the preliminary estimate. In preparing this estimate the properties included in a scheme are valued in detail and all available materials are collected to enable the Collector to make his valuation. These materials are—

(1) A complete list of the municipal assessments throughout the scheme.

(2) A complete list of all sales whether of lands or of lands and buildings. These are obtained by search in the registration offices and by local enquiry. If a sale is at a suspiciously high or low rate, local enquiries are made as to the circumstances in which it occurred. Copies of the deeds are obtained when necessary.

(3) A complete list of the rents paid throughout the scheme.

These are collected by local enquiry and are entered by the surveyors in the valuation cards. In handling statistics as to rent it is obviously necessary to reduce them to some common measure. In order to do this the net rents are calculated out per 100 square feet of floor space for all storeys of the building. Rents for houses, shops and bastis, are classified separately. Ground rents are also collected. The statistics obtained in this manner are then compared. Sales with the rate per cotta are entered on a sketch map of the project, the total amount paid and the date of the sale being entered. Where the municipal authority have at any time made a special valuation of land, the rate per cotta arrived at is noted on the plan with the date of the valuation. Where ground rent is collected from the land this is capitalized at 20 years' purchase with 10 per cent. off for deductions and the resulting rate per cotta is also noted on the plan. Rents are worked out and tabulated over the whole scheme to enable the Collector to ascertain the prevailing rate of rent. Examples of the manner in which these statistics are used are given in the map of Scheme No. VII A and the rent statistics for that scheme in the Appendix. The surveyors in preparing the valuation cards note the area occupied in every case in which rent is paid. This must be done if the rent statistics are to be of any value.

In preparing the preliminary estimate it will not always be possible to collect all this information. Estimates are often wanted urgently. And it is also sometimes very important that the declaration should issue so that the date on which the valuation is to take effect should be fixed and speculation for the purpose of raising the land values forestalled. In such a case the Collector having collected as much information as possible in the time will estimate for the scheme in a lump sum. His experience of similar schemes will generally enable him to fix a fairly accurate all over average rate for the land and buildings. But though an estimate prepared on these lines may be accurate enough, it is always better if there is time to value the property in detail and in doing so to value strictly upon the rent. The instructions issued by Government contain an example according to which estimates should usually be prepared, in Rule No. 17, Chapter III, page 55 of the Land Acquisition

Manual. This form should be altered to suit each case. Waste, arable, homestead, and bazaar land will not all command the same years' purchase. The calculation should therefore be made separately for each class. When adding the value of the tenants' interests and the value of houses, trees, and standing crops, the Collector should be careful to see that he does not add the value of anything for which rent is being paid. If he does, he is in effect valuing the same thing twice, once by the rental method and once by the land and buildings method. Damages must be paid for standing crops but their value has nothing to do with the market value of the land, and the additional 15 per cent. compensation is not payable on such damages.

Before he makes his final award, the Collector will also probably have some evidence placed before him by the claimants. And where he is acquiring for a local body or company these may also place their own valuation before him. In such cases I always ask for a valuation from the local body concerned. All these materials will be considered by the Collector before he makes his award. He is not bound to disclose his information to the parties but as a matter of practice I usually do so. These valuations, plans and statistics however, are kept confidential and copies are not issued to the public.

Reasons for award.

21. The Collector is not required by law to give any reasons for his award. Only in cases referred under section 18 where the objection is as to the amount of compensation awarded is he required to state the grounds on which the compensation was determined. In Bombay it is usual for the Collector who acquires for the Improvement Trust to deliver a long written judgment containing his reasons for the valuation. This is in my opinion extremely dangerous. The valuation may be correct enough. The reasons will often be wrong. Such reasons are, as I have found, frequently used by the Courts as admissions on the part of Government with the result that awards in neighbouring cases are enhanced. They are never used for any other purpose. If this is the only use to which the Collector's reasons are to be put, it is obviously very dangerous for him to give any reasons at all. In the award as originally passed, therefore, no reasons should be given though a note of such reasons should be kept for the information of Government and of the Collector. In cases of reference the reasons should be as brief as possible. In the case of land and

buildings I give the fair rent, the deductions and the years' purchase. In the case of vacant land I give the rate per cotta. In the case of huts where these are valued separately I give the depreciated rate per square foot.

Compensation.

22. In arriving at his decision as to the compensation to be awarded, the Collector must observe the provisions of sections 23, 24 and in cases of acquisition for the Improvement Trust, section 24A. He has, therefore, to decide what compensation should be awarded on account of—

(1) The market value of the land.
(2) Damage to standing crops.
(3) Damage for severance.
(4) Damage for loss to other property or for loss of earnings caused by the acquisition.
(5) Damage for removal of residence or place of business, and
(6) Damage for loss of profits due to the declaration of acquisition.

He must assess and value all these factors before he makes his award.

Market value.

Section 23(1) first.

23. The market value of the land. This is the value of the land at the date of the declaration. The expression 'market value' has been frequently defined by the Courts but it is not necessary to discuss the point at length. The meaning is sufficiently obvious. The Collector has to ascertain what price the property would have fetched if it had been sold to a private purchaser on the date of the declaration. In order to do this, he values it precisely as a private purchaser would have valued it and that is exactly what I always endeavour to do. In the case of land acquired for the Calcutta Corporation, section 557(*d*), Bengal Act III of 1899, provides that 25 times the annual assessed values shall be the *primâ facie* valuation of the property under acquisition.

There is nothing secret or mysterious about the value of land. It is a commodity commonly dealt in and like every other commodity it has a price which can be ascertained within certain limits. This price constantly varies according to the variations of the supply and demand and it is impossible to fix it at any given time with mathematical accuracy. A property may be worth Rs. 19,750 or Rs. 20,000. There is no valuer who in such a case would be prepared to assert that it was worth the higher figure rather than the

lower with absolute certainty. If he was selling he would value it at the higher figure in the hope that the purchaser would pay the lower. If he was buying he would offer the lower in the hope that the higher would be accepted. But there is no reason why a careful enquiry should not ascertain the correct price approximately. If in such a case the Collector found that the property was worth Rs. 19,750 the Courts would not in my opinion be justified in increasing his award by Rs. 250.

Rental Valuation.

24. The chief factor fixing the price of land is the rent that can be derived from it. Outside the towns land is chiefly used for crops. The rent paid will therefore vary according as the land is more or less fertile or better or worse situated with regard to facilities for irrigation, transport of crops, etc. Land which will grow an expensive crop, will command a higher price. In the towns land is chiefly used for buildings. The owners either lease it out to some person who builds on it or build on it themselves. In either case in far the greater number of instances these buildings are then leased out to tenants. Here the rent will vary according to the position of the land and the nature of the buildings erected on it. It is customary for the experts who are cited before the Courts to profess to be able to estimate the proportionate value of a corner site to one further down a street or of front land to back land. But these variations will be reflected in the rates of rent paid with far greater accuracy. A man who buys land in the great majority of cases does so with the expectation of getting a certain profit from it. He regards the land as an investment yielding interest in the form of rents. In far the greater number of sales this is the purchaser's object and the conditions of the market must obviously be governed by the average case. The result is that the main factor affecting the price of land is the rent that may be expected from it. This is of course a common place of valuation but I have elaborated the argument as I find constantly that this fact is not understood either by the parties with whom I have to deal or by the pleaders who appear for them. This fact holds good equally in the case of persons who purchase land in order to use it for a dwelling house for themselves and also in the case of persons who purchase land as a speculation with the intention of selling it as soon as the value goes up. In the former the man who buys is saved rent that he

would otherwise have to pay. And in making his purchase both he and the seller must, even if unconsciously, be swayed by their knowledge of the profits derived from similar land. In the latter it is clear that the only reason why land should become more valuable is that people should be found willing to pay a higher rent for it. It has no other money value in most cases. The speculator is therefore waiting for a rise in rents and it is his expectation of the future rise in rents that determines the price he is willing to pay.

25. The principal factor in my valuations is therefore the rent. Apart from this it is the only factor that can be used systematically in valuing land. The obvious method of ascertaining the market price of anything is to examine as many instances of actual sale as can be found. In some cases this would be easy enough. If a man in Calcutta wished to find out the price of some commodity commonly bought and sold such as eggs, he would go to the various markets and find out in each what was the price for which eggs actually sold. One egg does not differ very much from another and a small number of instances would be quite sufficient to establish the market price. If however he wished to find out the price of anything that varied considerably such as diamonds he would have to examine a very large number of instances before he could arrive at any definite conclusion as to why by reason of a particular colour or water one diamond should command a much higher price than another. Land is a commodity which varies in a quite unusual degree. Two pieces of land within a hundred yards of each other may and often do differ in price by over a hundred per cent. The price is enormously affected by situation and the nature and arrangement of the structures. In order to understand such differences and to estimate their effects at all accurately innumerable instances would have to be examined showing how the variations of price followed from the variations in position and arrangement. But it is practically impossible to procure a sufficient number of cases of actual sales for purposes of comparison. Settlements in former land acquisition cases are also of little value. As the Tribunal in Bombay has pointed out the rates arrived at in such settlements may stand upon a wholly different footing to rates fixed between ordinary sellers and buyers. The number of sales in Calcutta

at any rate is not large and the circumstances often differ very greatly. In my own experience I usually find it impossible to deduce anything from them although I always consider them before making my valuations. On the other hand it is always possible to ascertain the rents paid over a large area and my invariable practice is to collect all possible information as to the rates of rent paid in the locality before I make any valuation.

26. As the rent is the profit or interest derived from the land, it must necessarily bear a certain definite proportion to the capital invested, *i.e.*, the price paid for the land. If this proportion can be ascertained, a simple mathematical sum will give the price in every case in which the rent is known. This is the principle upon which all rental valuation rests. It is applied as follows. The gross rent is first taken. From this are deducted all amounts which have to be paid by the owner of the property either under any law enforcing local rates and taxes upon the owner of landed property or in order to maintain the property, such as, expenses on account of repairs, insurance, etc. A deduction is also made on account of losses which the owner may have to suffer, *i.e*, for bad debts or vacancies, etc. And the expenses likely to be incurred by him in collecting his rents are also deducted. The result after these deductions is the net rent. This is capitalized at a certain rate per cent. The result gives the capital invested which is the valuation of the property.

27. In such a valuation there are three factors, which the Collector has to determine—

(*i*) The normal or fair rent.
(*ii*) The deductions from the rent.
(*iii*) The rate per cent. at which the rent is to be capitalized.

(*i*) The gross rent can be ascertained by local enquiry, by examination of rent receipts and by the statements and admissions of the parties themselves. Where an entire house or property is actually rented, the Collector will find very little difficulty in ascertaining the rent actually paid and I find that it is very seldom disputed. The actual rent paid is not however the basis of the valuation. What the Collector has to decide in valuing in this manner is not the rent actually paid or collected but the rent which would ordinarily be paid or collected. In fact he has to

decide as to the rent what the Act requires him to decide as to the valuation, viz. its market value on the date of the declaration. In making this decision he is practically valuing the property, and the value of the method lies in the fact that it is far easier for a valuer or anyone else to think in terms of rent than in terms of actual price. A man who has any knowledge of rents in any given locality will tell you that one field will rent for Rs. 4 a bigha and another for Rs. 5 or that one house will rent for Rs. 100 and another for Rs. 150, but if you ask him for the total value of the respective properties, he will probably decline to express an opinion. I have given the reason above. Rents are commonly known to every one and there are innumerable instances in every locality. Sales are not at all common and are not commonly known. For this reason it is much easier to ascertain the probable rent of a property than its probable price although the price can be deduced from the rent with fair certainty. At the same time it must be remembered that the normal or fair rent will be the average rent. In by far the greater number of cases it will therefore coincide with the rent actually paid when rent is actually paid. It would be absurd if a person proposing to value upon the normal rent were in any larger number than 50 per cent. of his valuations to adopt a rent either higher or lower than the actual rent which is admitted. I have seen many valuations prepared on these lines and have invariably rejected them.

In my acquisitions in order to ascertain what the prevailing rate of rent is I make arrangements to have the rents collected over the whole project. The accommodation is classified according to the use to which it is put and these classes are ordinarily—

(1) Rent paid on account of shops.

(2) Rent paid on account of business premises.

(3) Rent paid by tenants occupying entire houses as residences.

(4) Rent paid for premises used as common lodging-houses.

(5) Rack rent collected in basti areas or common lodging-houses.

In each case the rent is calculated per 100 square feet of floor space excluding cook rooms, privies and store rooms in pucca houses. The information is then classified according to position, *i.e.*, by streets. The manner in which these statistics are collected and

arranged is dealt with in the chapter on statistics. With all this information at his disposal, the Collector should have little difficulty in deciding the ordinary normal rent of any property which he has to value whether it is rented or not.

Deductions from the Rent.

28. (*ii*) In order to ascertain the net rent, certain deductions have to be made from the gross rent. These are payments on account of taxes payable by the owner, insurance, collection charges and bad debts, vacancies and repairs. In Bombay where acquisition on a large scale has been proceeding for many years for the Improvement Trust it is usual to estimate for all these separately as follows. I give the usual rates.

(1) *Insurance.*—This varies considerably. It is usually taken at one quarter per cent. on nine-tenths of the cost of the building which is supposed to represent the value of all structures above the plinth area.

(2) *Sinking fund.*—This is usually taken at 3½ per cent. on the original cost of the building.

(3) *Bad debts, vacancies, etc.*—This varies from 7½ per cent. to 2 per cent. or even nothing. It is usually taken at 7½ per cent.

(4) A lump sum is also usually deducted for depreciation which is calculated on the estimated life of the building. It represents the accumulation of an imaginary sinking fund for the period during which the building has been in existence.

(5) Ordinary annual repairs are usually taken at 1 per cent.

I do not think it very useful to make these elaborate calculations. Nor does this system represent the practice of the Calcutta market. A purchaser of property never considers all these items separately. He makes a lump deduction from the rent on account of taxes, repairs, collection charges, and vacancies and bad debts. He never considers the question of a Sinking Fund or Insurance at all. The Calcutta Municipality in making its valuations makes a deduction of 10 per cent. for taxes where the owner pays one share of the tax only, and 10 per cent. on account of collection charges, etc. The claims filed before me prepared on these lines show that this is the general practice of the market.

Ten per cent. may therefore be taken as the normal deduction on account of repairs, insurance, collection charges, and vacancies. It will of course vary according to the conditions of the structures and the use to

which they are put. I have in some cases increased it to 25 per cent. and in some reduced it to 5 per cent. or even less. But I find that my tendency in valuing is to vary this factor less and less and to confine the variation to the third factor, viz., the rate of interest at which the rent is capitalized. It is not usual to find that one owner spends a larger percentage on repairs than another. The tendency of all owners is to avoid repairs as far as possible. Also I do not in actual practice find that there are such differences in collection and insurance charges, vacancies, etc., as would justify much alteration in the deductions on this account. Also it is much easier to handle statistics in which there is only one varying factor. In all other than very exceptional cases, I am therefore inclined to think that the deductions on these accounts should be taken at 10 per cent.

The deduction on account of taxes will depend on the rate at which such taxes are levied in any particular locality. In Calcutta the deduction invariably made on this account is 10 per cent. where the owner pays the owner's share only and 20 per cent. where he pays both owner's and occupier's share. All that need be noted is that this figure does not depend on the sums actually paid by the owner on account of the tax. The amount of tax levied by the Corporation depends on their valuation of the property. That valuation is often out of date or incorrect with the result that the tax actually levied is much too low or too high. In making the deduction therefore I take what should be paid not what is actually paid.

Number of years' purchase.

29. (*iii*) The rate per cent. at which the rent is to be capitalized.

This factor gives what is known as the years' purchase. The principle is simple enough. As I have said a man who purchases land purchases it for the return which he expects to get from it. That return is the net rent and it will represent the interest of the capital invested by him. If it is known what rate of interest this represents, it is possible to determine with absolute certainty the capital invested in the property. For instance, if the net rent is Rs. 1,200 a year and the rate of interest is 6 per cent., the calculation is as follows:—as 6 is to 100 so is 1,200 to $\frac{100 \times 1200}{6}$ or $1200 \times 16\frac{2}{3}$. This figure $16\frac{2}{3}$ is the years' purchase and the total valuation of such a property on a 6 per cent. basis is therefore Rs. 19,200.

30. This is by far the most important factor in the valuation. Although it is usually also the most disputed, it is possible to fix it within certain very definite limits. In order to do this it is necessary to ascertain what rate of interest can usually be obtained from capital which is invested in land for which rent is paid. In this respect land is a security like any other security such as a Government Promissory Note, a Bank share, or a share in some commercial undertaking. Securities differ according to the degree of certainty with which the money invested in them will be returned. That is to say some are safer than others. It is obvious in the nature of things that a man investing money will expect a higher rate of interest from an investment which is not safe. The safest and most certain securities will therefore return the lowest rate of interest. In most countries the safest securities are those which are guaranteed by the respective Governments. These are regarded as first class securities. The normal rate of interest returned by them can be ascertained without difficulty. In Europe before the war this rate of interest was from 3 to 3½ per cent. In this country the return was nearly four per cent. The war has of course altered these rates very considerably and the rate in Europe is now very much higher. If this result persists after the war, the price of all interest yielding securities including land will be reduced, but it is unnecessary to go into this question at present. The normal return from a first class security in this country may then be taken at 4 per cent. This fact alone fixes the return expected from land within certain limits. It is clear that if money invested in Government securities yields a return of four per cent. money invested in land will not yield a return of either forty per cent. or one per cent. The purchase of land is a fairly safe form of investment though not so safe as the purchase of Government securities. For one thing there is the risk of litigation and in this country it is a very considerable risk. For another there is the risk that a piece of land or a building may remain unlet for long periods. The return therefore will be a little higher than that from Government securities and it will increase as the security becomes worse. It may be argued that the security of one piece of land cannot be any worse than that of another. This is not so. Land can very easily deteriorate in value and very commonly does so.

Apart from this it is obvious that the security afforded by structures on the land continually decreases as the buildings grow older until a point is reached when the building has to be replaced. The return from land will vary accordingly. Although a great deal has been made of this question before the Courts, experience shows that there is in fact a fairly general agreement as to the return to be expected from ordinary house property in this country within certain very narrow limits. In the first large valuation made in Calcutta, that of Scheme No. I which was acquired for the Improvement Trust, I adopted 6 per cent. as the normal return from ordinary house property that was neither very good nor very bad. The parties who appeared before me almost invariably based their claims on the assumption that the return was five per cent. In a very large number of judicial decisions both in Bombay and in Calcutta the same limits have been taken and the Improvement Trust Tribunal in Bombay have also adopted them with a leaning towards the lower figure. The average number of years' purchase awarded up to the present by the Tribunal in Calcutta in dealing with land and pucca structures is 17-18. It may be accepted then that the normal return from ordinary house property varies between these limits and that the years' purchase varies from 16⅔ to 20. I do not think that it can rise above 20 except in the most unusual circumstances. On the other hand for inferior and overcrowded or insanitary properties or for houses in a bad state of repair it can and often does fall below 16⅔ and in certain cases the Courts have awarded much less. The Bombay Tribunal for instance have valued house property at 20, 16⅔ and even 14⅔ years' purchase, see references Nos. 48 of 1902, 31 of 1902, 10 of 1904 and 53 of 1905. And the Bombay High Court has laid down that, in capitalizing a ground rent, in no case should more than 20 years' purchase be allowed and not more than 16⅔ when the ground rent is unsecured. Bombay L. R. 10, 907. These are questions which the Collector must decide for himself upon the materials before him in each acquisition. I have merely endeavoured to show how the system is worked and the general principles on which it is based. In the Appendix tables are given showing the years' purchase actually awarded by me and accepted by the parties and also the years'

purchase awarded by the Tribunal for different classes of property. I have also given a typical example of a valuation by this method.

Property that is not rented.

31. This method of valuation applies equally well whether the property is not rented at all or whether it is only partially rented. In either case as I have pointed out the Collector should be able to assess the fair normal rent and as to the other factors there is no real difficulty. If the Collector accustoms himself to thinking in terms of rent instead of value, he will find it more and more easy as he gains experience to assess the fair rent of every kind and variety of property. Personally I apply this method even to properties occupied by basti huts though in such a case the deductions are increased and the years' purchase is very much reduced from the normal. In estimating the fair rent the Collector must remember that he is calculating what the rent would be if let to a single tenant only and not to a large number. The rent collected room by room is the rack rent and not the fair rent. The rent for shops may however be estimated separately.

Vacant land.

32. It may be objected that this method of valuation cannot be applied to pieces of vacant land. But a complete knowledge and comparison of the rents over a large area will give the Collector a very good idea of the relative advantages of position. These will be much more certainly deduced from the rents than by any system of hypothetical reasoning. If necessary and if there is no sale in the neighbourhood to give the Collector some idea of the value of bare land he can estimate the proportion of the rent carried by the land and that carried by the buildings and from this deduce the price of the land. The method is not accurate, but if a sufficiently large number of instances is taken, the results will probably be correct enough. Usually however the Collector will be able to find instances of sales of vacant land and as the rents will give him the relative values for the different localities, he can work out the value of pieces of vacant land. Personally I work out the values of the land throughout an entire scheme. But these values are merely the value of the land as cleared building land, and I do not rely on the results in valuing properties which consist of land and buildings.

Agricultural land.

33. Precisely the same principles should be applied to the valuation of agricultural land. The years' purchase of the rent will be higher here as there are

no buildings to depreciate the value of the land. In Bengal, for such land, agricultural rents are almost invariably capitalized on a five per cent. basis and 20 years' purchase of the net rent is allowed.

34. The one great objection which is always taken to this system of valuation before me is that it does not allow for what is called the "potential" value of the land. The expression is a very vague one but what is meant is that land is continually increasing in value and that there is a chance that it may increase very greatly. In plain terms it amounts to a statement that land is always worth more than its value because at some future date it will be worth more than that value. Obviously this is nonsense. The so-called potential value, if any exists, will be reflected in the price or rent paid for any particular piece of land. It is not a secret which is the peculiar possession of each purchaser or owner. If the argument were that a piece of land purchased or leased ten years ago is now worth more, there would be some sense in it and in such a case the Collector will not value on an existing rent if this is plainly unfair, but on the rent which will be fair having regard to the existing market. If it means that the Collector having ascertained the correct market price of a piece of land should proceed to increase this because of some imaginary and magical quality in land by reason of which land is always worth more than it appears to be worth the argument as I have pointed out is nonsense. Each owner, who has acquired land by purchase will of course endeavour to make out that he has made a quite exceptional bargain in his piece of land and that the property purchased is worth far more than what he paid for it. But that is the way of purchasers when they become sellers. It is also of course true that land is not easy to obtain in certain localities and that an owner will vastly prefer to hold on to his land as an investment which may rise in value without much risk or trouble on his part. But that fact will also be reflected in the market price and the rent and will indeed be one of the very factors which affects these. And apart from that consideration the Collector is bound by law to pay no attention to any unwillingness on the part of an owner to part with his land. If therefore the Collector ascertains the correct market value. he may rest assured that the so-called potential value is included in it. **Potential value.**

The value of anything whatever attached to the land, *e.g.*, crops, trees, structures, etc., will be included **Trees, etc.**

in the rental value and no separate allowances on these accounts are made. If for any reason it is necessary to value trees separately, it should be remembered that the general rule is that they are the property of the zamindar and that they should be valued as timber only, 13 Calcutta Weekly Notes, 187. Tanks, wells, etc., are also included in the rental value. It is usual however in agricultural areas, and where a tank is used for drinking water to offer as compensation the cost of constructing a similar tank. If this is done, the rent paid for the tank should be disregarded or a deduction made from the rental value.

Land and Buildings.

35. In my opinion the rental method is the only scientific method of valuation. There is however another method which has been widely used in Bengal and on which the Courts and the Special Tribunal still rely. This method is known as the "Land and Buildings" method. It is worked as follows. The land throughout a scheme is valued by deductions from neighbouring sales. Generally it is divided into three belts, the first to a depth of 60 feet on the road frontage, the second to a depth of 90 feet from the first or 150 feet from the frontage, and the third consisting of all land behind this. It is assumed—I have never been able to find any reason for the assumption—that the relative values of these three belts is 100, 66·6 and 50. If any sale is discovered giving the value of the front belt, the value of the other belts is calculated automatically from this and *vice versâ*. At the same time the valuer takes into consideration any exceptional advantage or disadvantage of position attaching to the different plots and makes allowances for them. After the land has been valued in this manner the structures on the land are next valued. This is usually done by measuring the plinth area and then estimating the cost of original construction. A varying percentage is then deducted for depreciation and the result is the valuation of the structures. This figure is then added to the valuation of the land and the total is assumed to be the total value of the property. The method is radically unsound. It confuses cost with value, as the value of buildings after ten or twenty or fifty years bears no possible relation to the cost of erecting them. It confuses the value of land as a cleared building site with the value of land combined with suitable or unsuitable buildings. It assumes that the value of the structures

plus the value of the land will give the valuation of the property. Very often it gives nothing of the kind, and I have frequently come across cases where the land would be worth considerably more without the structures. It assumes a relation between front and back land of which there is no proof and no evidence. And in almost every case before it will yield results that can be adopted with any certainty, the figures must be juggled with considerably. The two great objections to it are obvious. The first is that it values separately two things (land and structures), which in practice are never separated and which it is impossible to separate, and the second is that there is no certain method by which it is possible to deduce the value of land from the few sales which can usually be procured and there is no way at all by which a constant valuation of the structures can be maintained. It may be possible to estimate what the cost of erecting them might have been, but even here two expert valuers will differ considerably and as regards the question of depreciation they will differ still more widely. The system is also contrary to the law. What the Collector has to ascertain is the "market value of the land." But this method aims at ascertaining the original cost, not the present "market value," of the buildings and the depreciation on that cost. It is obvious that this is not the "market value." And in fact buildings when separated from the land have no other "market value" than that of the materials of which they consist. Another great objection to this system is that in practice the price of the land is made to depend upon the valuation of the buildings, a favourite device being to take some award or sale and to deduct the hypothetical value of the buildings calculated by this method from the total in order to arrive at the value of the land. If then an error is made in the value of the buildings, the price of the land is increased or decreased and the error extended indefinitely. This will appear very clearly to any person valuing a complete scheme containing a large number of plots. It does not however appear so clearly in the Courts where it is sought to prove the valuation by formal evidence and where each case is decided separately and upon the evidence produced in that case without reference to other cases which probably explains the fact that the Courts still rely on this method. In my opinion the Collector should as far as possible avoid it.

Roads, Ferries, etc.

36. Rights in ferries, fisheries, etc., can be valued on the rent in the same way. The net return should be ascertained and capitalized according to the nature of the security. There are certain classes of property however on which no money value can be put. As for instance roads and common passages. In a case where certain public roads situated within a permanently-settled estate were acquired, the owner claimed for the value of the land included within the roads. The surrounding land had also been acquired and the Privy Council on appeal held that the roads had no money value, I. L. R. 26 Calc., 194.

Where however a local authority is by statute vested with the power to close a road and to sell the site as in the case of the Calcutta Corporation (section 355 (*1*) Act III of 1899), it is clear that this ruling will not apply. In Calcutta the practice has always been to pay for such roads at one-third of the estimated rate at which the surrounding lands are valued. This practice is however hardly justified. The roads must be valued as roads and the only element of "market value" contained in them is the probably remote contingency that the local authority will close them and sell them. Ordinary common passages are a part of the property and their valuation will be fairly included in the rent paid for it. A separate valuation should not therefore be assessed on common passages, but the proportionate share of the area should be included in the award and no addition made to the total valuation. Where a large common passage exists which is more of the nature of a private road than a mere means of access to a house, the practice in Calcutta, which has repeatedly been accepted by the Courts and the Tribunal, is to award at one quarter of the estimated rate at which the surrounding lands are valued.

Hypothetical Building Schemes and Plotting Schemes.

37. At one time in Bombay the Courts placed considerable reliance upon what were known as "Hypothetical building schemes" or "Plotting schemes." In a hypothetical building scheme it was assumed by the claimants that the land was first cleared for buildings and that new buildings were then erected upon it. The imaginary buildings were let out at imaginary rents to imaginary tenants. The capital value was deduced from the assumed rents and from this was deducted the assumed cost of erecting the imaginary buildings. The result was supposed to represent the value of the land and was naturally

as imaginary as the other calculations. In a plotting scheme vacant land is assumed to be laid out in building sites with suitable roads, etc. It is then assumed on the basis of neighbouring sales of cleared land situated on good roads that the imaginary plots will be sold to imaginary buyers for similar prices. The assumed cost of constructing the streets, etc., and of clearing the land is then deducted from the total of the assumed prices and the result is supposed to be the valuation of the land. The Collector need hardly concern himself with arguments of this nature. Even in Bombay these imaginary schemes are not often now put forward. Section 23 (*3*) (*a*) of the Land Acquisition Act as amended by the Calcutta Improvement Trust Act rules them out altogether and section 557 of the Calcutta Municipal Act contains a similar provision. Clause 3 (*c*) of section 23 of the former Act provides that any improvements actually made within two years of the date of the declaration shall be disregarded unless it is proved that the improvement was made without any idea that the land would be acquired. Section 557 of the Calcutta Municipal Act contains a similar provision. Here at any rate the intention of the legislature is plain. It is obvious that if an improvement made two years before the declaration is not evidence unless it is proved that it was made without any idea that the land would be acquired. an imaginary development made by hypothesis after the public declaration is not evidence at all. And even under the original Act, section 24 (*7*) provides that any outlay or improvements made on the land without the sanction of the Collecter after the declaration are to be disregarded.

Additions to and deductions from the compensation.

There are certain other matters which the Collector must consider before he assesses the compensation to be entered in his award. If before the declaration an owner has incurred any expenditure with a view to increasing the value of his land, compensation amounting to his actual expenses may be awarded. Such cases are not common but in one or two I have allowed compensation where owners have had plans for buildings prepared. Sections 23 (*3*) (*d*) and (*e*) and section 24A of the Act as amended by Bengal Act V of 1911 are not often referred to as if the land is valued upon the rental method, as is my invariable practice, such matters must be considered and decided before the fair rent is assessed. A house used as a brothel for instance or an overcrowded house will

fetch a high rent, but the Collector does not accept this rent but values on a fair rent which is based on the assumption that the house is used for ordinary purpose. And when a building is insanitary or in very bad repairs, the security is clearly bad and the years' purchase would be reduced.

In assessing the market value, the Collector does not regard any defect of title. He is assumed to purchase the complete title though he does not necessarily pay anyone for it. If there is no valid title, he would still award the entire market value and would deposit the money. He must also disregard the circumstances detailed in section 24. The only clause of this section which is ever referred to in practice is clause 7. In ordinary land acquisition any outlay or improvements made after the declaration will not be paid for unless the Collector's sanction to them is first obtained. In acquisition for the Improvement Trust they will not be paid for unless they are necessary for the maintenance of a building.

Damages for Crops.

38. Damages to standing crops.—This question will arise in the case of agricultural land. The Collector will often be able to defer possession until the crop has been reaped. If he does not, it will be easy to ascertain the value by local enquiry. Section 23 (*1*), secondly.

Damages for Severance.

39. Damages for severance.—The Collector should be careful in framing his declaration to avoid as far as possible claims under this head. By a little arrangement it will usually be possible to do so. In any case he must remember that damages for severance on account of sentimental reasons cannot be entertained. The only case in which the question is likely to become acute is when a property is deprived of access. In such cases I always endeavour to arrange with the acquiring body that another access which will satisfy the owner should be given to him and that no damages should be awarded. The Collector should note that a part of a house or building cannot be acquired without the consent of the owner. If the owner desires, the whole must be acquired. And if his claim for severance is excessive, Government can direct the acquisition of the entire property without any further declaration. If these provisions are carefully worked it will usually be found that no award need be made under this head. Section 23 (*1*), thirdly.

Damages for Loss of Earnings.

40. Damages for loss to other property or for loss of earnings.—The damages awarded on this account are almost invariably for "loss of earnings." Section 23 (*1*), fourthly.

No compensation is payable under the Act except to persons interested in the land. And compensation is not therefore given under this head to persons whose only interest in the land consists in the fact that they work on it even although their earnings may be affected by the change of ownership. Persons who merely labour on the land are not therefore entitled to damages under this head. The expression is a vague one which should be read with section 24 (*3*). Under this latter section any damage that would not if caused by a private person render him liable to a suit should not be allowed for. The question of these damages is only likely to arise in the case of town property when shops, or businesses, have to be removed. It is obvious that in some cases removal will entail some loss of earnings. It does not follow that this will happen in all cases. A shop or business which has regular customers, will suffer by removal. A business that is largely conducted by post will not suffer at all. In my opinion the damages under this head will also depend largely on the terms on which the person claiming holds the property. If he holds as a monthly tenant, he is entitled to a month's notice only and no more. If he holds under a lease or is the owner of the property, his damages will then become a question of evidence as to the actual loss likely to be suffered. His books of account and income-tax returns may be examined and enquiry made into the nature of his business. In my actual practice in Calcutta I have very seldom awarded any large sum under this head because almost all the tenants with whom I have had to deal are monthly tenants who have already had more than a month's notice. In such a case they are not in my opinion entitled to any damages for loss of earnings, but I allow what I estimate to be one month's loss of earnings because it is impossible in a large acquisition to give exact notice of the date of taking possession. This is often delayed or advanced at the request of the acquiring body or of some other party. In the case of businesses conducted under license such as hackney carriage stables, liquor shops, opium shops, etc., I usually endeavour to arrange that the parties shall be left in possession until the license expires on condition that no damage is claimed or awarded under this head.

It has been held in England, that a license does not create any interest in land as it merely makes an

action lawful which would otherwise be unlawful. Damages on this account will therefore cover damages for removal only even if the license-holder is the owner of the house. In properties acquired for the Corporation of Calcutta this clause does not apply to surki mills, tanneries or other offensive trades. And similarly no damages for removal are paid in respect of these trades, section 557 (*e*), Bengal Act III of 1899.

Damages for removal.

41. Damages for removal of residence or business.—These damages are assessed by me upon actual inspection and I award them in all cases to persons having furniture to remove or to shop-keepers to cover the removal of their stock. In practice in the case of monthly tenants where only small sums are awarded, I usually make a lump award covering the damages under both heads. The two factors that I principally consider in awarding damages for removal are the rent paid and the floor space occupied. Also I consider the amount and nature of the material to be removed. A druggist for instance would be given a larger sum than a carpenter as his goods are much more likely to be damaged in transit.

Section 23 (*1*) fifthly.

In the acquisition for the Improvement Trust in Bombay the Collector merely acquires the landlords' right and the Trust take over the tenants and subsequently evict them. In such a case the tenants are not legally entitled to damages as is clear from clause (2) of section 24. At the same time if the intention of the acquiring body is to evict the tenants as soon as possession is received, it is clear that the tenants should receive some damages as they are in fact disturbed and compelled to change their place of residence or business by the acquisition without the notice to which they are entitled. The Calcutta Improvement Trust has always been very fair to the tenants in regard to this question and has never disputed on legal grounds the right to reasonable damages.

To ordinary casual tenants who are in no way inconvenienced by the acquisition and who have no property to remove that they cannot themselves remove, I do not award any compensation. I do not usually award damages to dhobis, hawkers and tenants carrying on trades of a similar nature. Their customers do not come to them and generally do not know where they live. Removal therefore hardly affects their earnings or expenses at all.

In valuing the tenants' interests, the Collector will also estimate and award for any fixtures belonging to the tenants which are not claimed by the landlord. These are usually huts, fittings and platforms in shops, electric or gas installations and sometimes trees.

Section 23 (1), sixthly.

Damages resulting from the declaration.

42. Damages under this head are seldom claimed. But in town properties it occasionally happens that a landlord loses his tenants on the publication of the declaration and is unable to get fresh tenants or has to accept a much lower rent because the land is under acquisition. In such cases I award damages based on the actual loss if it is shown to my satisfaction that this is due to the acquisition. Arrears of rent are sometimes claimed under this head. In my opinion the section does not cover this. The landlord should not allow his tenants to fall into arrears and if they do, his remedy is in the courts.

23 (2) Section

Statutory allowance.

43. In all cases of compulsory acquisition with one exception 15 per cent. must be added to the market value of the land only in the award. The exception is made by the Improvement Trust Act. In cases under Act 1 of 1894 as modified by this Act where the land acquired is situated in the Calcutta Municipality and within an area comprised in an improvement scheme sanctioned under the Calcutta Improvement Act, 1911, this additional compensation is not to be awarded. In such a case however and in such a case only costs are awarded. So far as the owner or any person interested in the value of the land is concerned, the result is fair enough. If he does not get the 15 per cent. allowance, he at least gets his costs. The case of the tenants is different. The additional allowance of 15 per cent. applies to the market value of the land only and is not added to damages. The result is that in Improvement Trust cases the tenants are paid costs, and in other cases they are not paid costs and are also not entitled to anything over and above the sum actually awarded as damages. As the allowance of 15 per cent. is only payable on the market value of the land, the Collector must record his decision as to the market value of the land separately. If the parties in consideration of a lump sum awarded have waived the right to the additional allowance of 15 per cent., an agreement should be taken from them in writing and should be filed with the record.

Effect of award.

44. The award when once drawn up is final and conclusive evidence as to the area of the land, its

value and the apportionment, unless objection is taken to it by a reference to the Court or Tribunal. All that this really means is that the parties claiming to be interested in any way in the land are given a certain definite time within which they must decide either to accept the Collector's offer or to make a reference to the Courts. In the former case the Collector's offer or award becomes final and cannot be set aside by any authority. In the latter the point disputed by the party whether it refers to compensation or to apportionment is decided by the Court or Tribunal in a proceeding which is much the same as a regular suit, the claimant taking the place of plaintiff and the Government that of defendant in cases concerning valuation, and the parties fighting it out between themselves in cases relating to apportionment. Whether the Collector can himself alter or add to his own award is doubtful. There is in my opinion nothing to prevent his correcting a clerical error. Also it is in my opinion open to the Collector when by accident or mistake he has clearly omitted to value an interest to pass an additional award for such interest. Also an award may in the first instance be joint and the Collector may apportion it. Such alterations or additions should not however usually be made. If the Collector's award is wrong, the correct way to remedy it is by a reference to the Court.

When the Collector is an Assistant or Deputy Collector specially empowered under section 3, he must, in every case in which the award exceeds Rs. 10,000, consult the Collector of the District demi-officially as to the information which he is to take into consideration in making his award. The Collector of the District may also order that every case is to be referred to him before the award is made. The Commissioner has power to exempt officers from the necessity of making such references.

Notice of Award.

45. As soon as the award is drawn up, notice under section 12 (*2*) is at once issued to all persons named in the award or who have made claims. If the award is actually signed in the presence of the parties, such notice is not necessary. The issue and due service of this notice is important, as the date of its receipt fixes the time within which the claimant must file his application for reference if he does not accept the award. The Tribunal in Calcutta has recently ruled that ordinary legal service is not

Section 12 (*2*).

sufficient for this purpose and that the word "receipt" used in section 18 (*2*)(*b*) must be construed strictly and literally. It has also held that formal notice is not necessary if it is shown that the claimant received notice from the Collector and that payment by means of a cheque, in which the claimant acknowledged receipt of the money, is sufficient notice. It is very doubtful whether this view of the law is correct. In all cases however it will be safer to issue formal notice under section 12 and to endeavour to obtain the actual receipt of the persons interested, or of a duly authorised agent.

Apportionment.

46. It is not the business of the Collector to apportion the compensation in cases where a question of title is in dispute. The Act requires that the Collector should decide the apportionment of the compensation, but does not really give him the power of doing so, nor does it give any effect to his decision. Disputes of this nature commonly arise between a landlord and tenant or a mortgagor and mortgagee or persons claiming under different titles. In such cases if the Collector does apportion the compensation according to his view of the respective rights of the parties and without their agreement, he still cannot give effect to his decision by paying the parties according to it. This is obvious. If A and B both claim a sum of Rs. 500 and the Collector having awarded it evenly between them pays Rs. 250 to A, who accepts it, B may still file a reference and the Court may decide that the whole Rs. 500 belongs to B. Apart from that section 31 (*2*) distinctly provides that in the case of any dispute, the Collector must deposit the money.

In such a case there are two courses open to the Collector. He may either apportion the award between the disputing parties and leave the party against whom he has decided to make the reference, or he may make a joint award deciding the total compensation to be awarded and may himself make the reference under section 30. The latter is the method which I invariably adopt in any case where a genuine dispute exists. My practice is as follows:—

If before the award is made the members of a joint family or a landlord and tenant, or mortgagor and mortgagee agree as to the respective sums to be paid to them, I apportion the award in accordance with their agreement. But when I do so I take care to see that the parties to the settlement are

competent to agree to it. I should not for instance accept such an apportionment by agreement where one of the parties was a minor represented by a guardian appointed by the Court unless the guardian had obtained the permission of the Court to enter into it. But when two or more persons claim property adversely, I invariably, in the first instance, make a joint award showing both as interested in the total sum awarded for that particular interest. After the award is signed if they come to an agreement as to the sums to be paid to them respectively, I take a written petition to this effect from them and pay them according to the agreement without making any fresh apportionment of the award. This is in accordance with section 31 (*2*), proviso 1, which provides that even where there is a dispute, any persons whose share or claim is admitted, may be paid. Payment should not, however, be made without the consent of all parties interested. And the Collector should see that no amount that could for any reason be adversely claimed is paid.

If the parties do not agree, I refer the dispute under section 30 unless one of the parties has himself referred it under section 18 before any reference is made. In the latter case a reference under section 30 is not necessary and it would be merely a waste of time to make one. I have found that this practice works very well. The parties understand it easily and it does not put them to the fruitless expense and trouble of proving their respective claims before an authority whose decision on the point is of no value. Where it is clear in my opinion that a counter claim is frivolous and harassing, I do occasionally apportion the award, but this seldom happens. It is obvious that as the Collector is not a Court and is not entitled to take evidence on oath, his decision upon intricate questions of title based merely on such information as he has before him is valueless. The Courts in such a case will probably hold that no onus is thrown by it on the party against whom he decides. An enquiry into such a question by the Collector, therefore, is merely a waste of his time and of the parties' money.

Tenants' rights.

47. Tenure-holders, raiyats holding at fixed rents or rates of rents, and occupancy raiyats are usually entitled to a share of the compensation. Even non-occupancy raiyats are entitled to some compensation and the Government rules point out that the raiyat will frequently not be able to obtain his share unless

the Collector intervenes in his behalf and therefore require that the raiyats should be distinctly and officially recognised at all stages of the proceedings. This does not however mean that the Collector is to award a portion of the value of the land to the raiyat and to pay it to him despite the zamindar's protests. Such a procedure would probably result in his having to pay twice for the land as the zamindar may make a reference and may win his case. As I have pointed out money that is disputed can never be paid. It is always doubtful how far a tenant is entitled to any portion of the land value and in such cases there will generally be a reference. If a dispute is raised, the Collector should leave it to the Courts to decide what is the share of the tenant.

48. The apportionment of the compensation between a landlord and a tenant is often a very difficult matter. But the principles which should be applied are simple enough. In valuing the property the Collector ascertains the total value. This value will be divided between the landlord and tenant according to the proportion of the profits realised by each having regard to the nature of their respective interests. For instance profits from agricultural land are usually capitalised at 5 per cent. in order to ascertain the total valuation. In perpetuity this represents 20 years' purchase, but for a lease or interest enduring for any less number of years the year's purchase will be proportionately reduced. A table giving the approximate present value of a lease having a certain number of years to run capitalised at 5 per cent. is given in the Appendix and exact tables may be found in any of the standard books. The following instance will explain the application of these tables. A, a superior landlord, has granted a perpetual lease of a certain piece of land to B at an annual rent fixed in perpetuity of Rs. 10. B has sublet this land to C for 18 years at an annual rent of Rs. 50. C himself cultivates the land. The total annual net profits from this piece of land are proved to be Rs. 100. The total valuation of the land is therefore Rs. 100 × 20 = Rs. 2,000. This would be apportioned as follows: A would receive 20 years' purchase of his reserved rent or Rs. 200. C would receive 11¾ years' purchase of his net profits the present value of a lease having 18 years to run being 11¾ or Rs. 1,175. The balance Rs. 625 would represent the share of the tenure-holder B. This instance is of course simple enough, but the ordinary

case with which the Collectors and Courts have to deal is much more complicated. It will usually be very difficult to ascertain the actual net profits of the land and it will also be necessary in many cases to estimate for the prospect of enhancement of the rent.

Production of evidence.

49. Throughout his enquiries the Collector has by law the same power to enforce the attendance of witnesses and to compel the production of documents as a Civil Court. In practice however he will find it rarely necessary to use these powers. Oral evidence, as I have pointed out, is of no value and the parties are usually willing enough to produce their documents or if the Collector has any knowledge of these he can obtain certified copies from the Registration offices. Section 14.

Taking of possession.

50. No actual ceremony is necessary in taking possession. The usual practice is for the Collector to take possession and simultaneously to make it over to the department or local authority for which the land is required. This is required by law under the various Acts as soon as the local authority has paid the cost of the acquisition. In taking possession an order is recorded on the order sheet of the case and a receipt is taken from the department or authority to which the land is made over. Section 16.

In taking over possession the public convenience should be studied as far as possible. For instance if possible the holder of a license for the sale of any particular thing or for carrying on a trade should be allowed to remain until his license expires on condition that no damages for removal are awarded. It is common knowledge that the months of Bhadro, Pous and Chaitra are inauspicious according to Bengali ideas and Bengalis should not be asked to vacate their houses during these months if it can be avoided. Also all persons interested should be given notice of the date on which possession is being taken and a general notice should be affixed on the door of the premises so that all people living in it may know and make their arrangements accordingly. If any person has objected that a part of a house, manufactory or building is being acquired and desires that the whole should be acquired and the Collector does not agree that the portion under acquisition forms a part of the house manufactory or building the Collector is not entitled to take possession, but must refer the question for the decision of the Court and cannot take possession until it has been decided, section 49.

When possession is taken, the land vests absolutely in the Government free from all incumbrances. In Calcutta the question has been raised whether this expression covers the Municipal rates and taxes levied under the Calcutta Municipal Act. The point has not been settled by authority. It is clear however that the Corporation can be treated as a person interested under the Act, as the rates are a charge on the property itself and the practice is for the Corporation to file their claim in all cases. In all awards the Chairman of the Corporation is shown as a person interested and the quarterly tax levied on the property in addition to any arrears that may be claimed is awarded to him and is deducted from the total compensation awarded on account of the owners' share. It is arranged with the Corporation that if the owner shows receipts proving that he has paid all taxes up-to-date, the receipts will be treated as an admission by the Corporation under section 30(*2*), proviso (*1*), that the owner is entitled to receive payment of the amount awarded as taxes. Otherwise unless objection is taken by the owner, payment is made to the Corporation. In making payments to the Corporation as each award is put up, the amount due to the Corporation is entered on the back of a cheque and initialled by the Collector on the cheque, the amount being shown in the award as paid. At the end of the month the amounts shown on the back of the cheque are totalled and the cheque is written out for the total sum and sent to the Corporation. No objection has been taken to this procedure by the parties and it may be used wherever a similar difficulty arises.

Section 17. **Urgent possession.**

51. In cases of urgency, by special order of the Local Government the Collector may take immediate possession after the expiry of 15 days from the publication of the general notice. This can only be done in the case of arable or waste land. But this provision of the Act can be applied under section 557(*b*) of the Calcutta Municipal Act (Bengal Act III of 1899) to any area which is stated by a Magistrate to be unhealthy. In certain cases where a Railway requires land at once the Collector may with the sanction of the Local Government take possession immediately after the publication of the public notice. But he must give the occupiers of buildings at least 48 hours' notice and in either case he must offer compensation for the standing crops and trees and for any damage caused by the sudden dispossession. If the persons interested

do not accept his offer, the damages will be allowed for in the award to be made subsequently. If the Collector is opposed in taking possession, he can, if he is a Magistrate, enforce the surrender of the land. If he is not a Magistrate, he must apply to a Magistrate, or in the Presidency Towns, to the Commissioner of Police, and these officers will then enforce the surrender of the land

In making over possession of any plot it is the usual practice to make over a plan of the land acquired to the acquiring authority with a certificate on it signed by the Collector to the following effect:—

"Certified that the lands in this plan were duly acquired under the provisions of the Land Acquisition Act I of 1894 under declaration No. of the 1916 and in Proceedings No. of 1915-16 and that they were made over by on the 1916 on behalf of the Land Acquisition Collector of to on behalf of the

Payment. **52.** The Collector must make payment as soon as an award is made. My practice is to allow a week in order to give the parties time to object to any payment. But the Collector should note that if payment is not made or the money is not deposited before possession is taken, he must pay interest at 6 per cent. from the date of taking possession. In many cases the parties desire the Collector not to deposit the money in order to give them an opportunity of settling a dispute or of showing that they are competent to alienate. In such a case I would not pay interest as the delay in payment is due to the request of the parties. Section 31

53. The making of payments is a very responsible part of the Land Acquisition Collector's work. He has to decide—

(1) Who should be paid for any particular interest.

(2) Whether there is any objection or dispute as to the title to take payment of the compensation or as to the apportionment.

(3) Whether the person to be paid is competent to take payment.

These points require very careful consideration and clear and definite instructions are not contained either in the Act or in the Government Rules. The first point will usually have been decided before the

award is drawn up and is concluded by it. In making his award, the Collector generally deals with the person in possession and where there is any dispute, he will make a joint award for all disputed interests. He is not bound to put the person in possession to strict proof of his title. It will often happen, however, that a dispute is raised after the award is signed. Another party who had no notice of the acquisition may come in or new facts may be disclosed to the Collector which go to show that the title of the person in whose favour the award has been made is or may be disputed. In such cases the Collector is not bound to pay and where any person takes objection to the payment he is in fact bound to deposit the money. Where such a dispute or a defect in title is discovered subsequent to the award I do not pay but deposit the money, leaving the claimant to prove his title in the Courts. If he succeeds, costs may be awarded against Government. In a recent case the Tribunal has held that after award the Collector has no power to call for the title deeds and must tender payment at once to the person named in the award and has awarded costs against Government. But in any case it is better that costs should be awarded than that the risk of making payment to a wrong person should be taken. So far as the title is concerned, I should only deposit the money in cases where an obvious and serious defect in title is discovered after award, as for instance, if the claimant's title deed showed that he had purchased from a guardian appointed by the Court without the leave of such Court or in some similar case. And in all cases when a dispute is raised even although the Collector is of opinion that the dispute is frivolous and the counter claim has no chance of success he is still bound to deposit the money in Court. The Collector, as I have pointed out, has no power to decide such a dispute unless the parties themselves come to an agreement. The Collector should not pay therefore even although an award has been made in favour of a particular person.

(1) When a plain and obvious defect has been discovered in that person's title.
(2) When there is a joint award that has not been apportioned.
(3) When any dispute exists.

With regard to (1) he should not pay in any case. With regard to (2) and (3), if all the parties agree as to

any particular payment, he may make that payment, provided that the person to be paid is competent to take payment. When a dispute is raised, I always insist that the persons objecting to payment should file a petition stating definitely that he objects to the payment of a definite sum of money to a particular person named in the award. This must be succeeded by a petition of reference. If no petition of reference is filed within six weeks of the date of receipt of notice under section 12 by the counter claimant or within six months of the date of the award, the Collector can, if he desires, safely make the payment, as his award is then final. If no definite petition is filed after an order to this effect, I refuse to consider the objection.

Cases often arise in which orders of attachment or for the disposal of the compensation money are issued by Courts after the award. In such cases the Collector should notice that it does not by any means follow that the Collector is bound to comply with such an order. The money attached may be claimed by some third party. In such a case if the Collector acting under the orders of a Court pays it away, the third person may make a reference and establish his claim with the result that the Collector will have to pay twice. In such a case I merely treat the Court as a claimant in a disputed case and deposit the money in the Land Acquisition Court or in the Tribunal, informing the reference court of the order of attachment.

Persons not competent to alienate the land.

54. These points having been decided, the Collector must next decide whether the person named in the award or who is to be paid by the agreement of the parties is himself competent to take payment. This is a very important question. The Act itself is very badly drafted on this point and the real provisions as to this are not contained, as one might expect, in the Chapter dealing with payment, but in the definitions. The general principle is that if a private sale by the person interested would not be valid, he is not competent to take payment. In order to explain in detail the circumstances in which a private sale is invalid, it would be necessary to review practically all the law and decisions relating to the transfer of property. Without entering into any lengthy discussion as to the law on the point, it may be stated briefly that there are certain classes of owners that cannot be paid, as they are not competent to sell. The following is a fairly exhaustive list and it is unlikely

Sec. 3 Cl. (g), proviso (4).

that a Collector will come across instances other than these :—

(1) A Hindu female having a life interest in the property.
(2) A minor.
(3) A guardian appointed by the Court.
(4) A joint family under the Mitakshara school of law.
(5) A natural guardian.
(6) A guardian *ad litem.*
(7) An Administrator.
(8) A Trustee.
(9) A Shebait.
(10) A Matwali.
(11) The Committee of a lunatic.
(12) A Receiver appointed by the Court

Hindu females

55. Under both the Mitakshara and Dayabhaga schools of law, a Hindu female has a life interest in all property inherited by her from males. The only exception is in Bombay where the High Court has ruled that daughters inheriting from a father and sisters inheriting from brothers inherit an absolute interest. The decisions, however, conflict with rulings of the Privy Council and if there is any doubt, the safest course for the Collector to pursue is to deposit the money. Similarly it has been held for the rest of India that a Hindu female inheriting from a female takes a qualified estate. In Bombay it has been held that in such a case the female takes an absolute interest. Here again, however, the law is doubtful. Even where property is given to a female, she has merely restricted power over it unless the express power of alienation is conferred upon her by the deed of gift. With these exceptions therefore a Hindu female is not competent to alienate property inherited by her. She is competent to alienate her own stridhan property. In the former case the Collector will not pay but will deposit the money on the ground that there is no person competent to alienate. There is, however, no presumption in law that property in the possession of a Hindu female whether widowed or not is inherited property. Also a female having a restricted interest is entitled to alienate in certain circumstances and most of the titles in Calcutta rest ultimately upon some such transfer. As a matter of practice, however, the Collector should take the safest course and should decline to pay unless he is satisfied that the property

is the female's stridhan. In the case of small sums for huts, fixtures, etc., I have made payments in cases where there was no strict proof that the property was stridhan upon the statements of the owners. But where large sums of money are concerned, I always insist upon proof that the property is stridhan. The question here arises whether a person who has purchased from a Hindu female is competent to alienate. The law is doubtful and his power to alienate will depend on the circumstances of the sale. In such a case however if the claimant is registered in the Collectorate and if his title deed alleges necessity or some valid legal reasons for the alienation by the female and is not very recent and if no specific objection is taken by any other person, I pay the claimant.

Minors and Guardians.

56. A minor cannot be paid at all, as he cannot give a valid receipt. The law of minority in British India is governed by the Indian Majority Act, IX of 1875. By section 3 as amended by Act VIII of 1890 the age of majority is in effect extended to 21 where a guardian of the person or property has been appointed, or where the superintendence of such minor's estate has been taken over by the Court of Wards. Subject to this restriction, all other persons shall be deemed to have attained majority at 18 years and not before. If a guardian has once been appointed the minor does not attain majority until he is 21 and it is immaterial whether the guardian dies or is removed. If the Collector finds that one of the persons named in his award is a minor, he should appoint a guardian if this is necessary for the proper conduct of the minor's case before him and deposit the money. A minor's guardian who has been appointed by the Court cannot sell the immoveable property of the minor except with the express order of the Court appointing him. A guardian appointed by the Court is therefore not competent to alienate and in such a case the Collector must deposit the money unless an order from the Court is obtained.

A natural guardian can be paid if he is acting under legal necessity. The law here also is by no means clear. But it has been held that a natural guardian is entitled to sell his ward's property if such sale is for legal necessity and is for the minor's benefit. In some cases I have paid a natural guardian on the ground that the guardian was under the necessity of selling the property for the maintenance of the minors. In several cases property of small value belonging to

minors was acquired. The property in question was the residential house of the minors and they had no other house. It would be difficult to assume a stronger case of necessity. In such cases I have sometimes paid, having taken security from the guardian. Unless, however, a very strong case of necessity is established and the amount involved is not large, the Collector should adopt the safer course of depositing the money. The guardian can always apply to the Court for the investment of the money in landed property. The Privy Council has held that a guardian cannot waive a claim to compensation for part of a minor's estate taken under the Act, I. L. R. 19 Calc., 9J P. C.

A joint family cannot be paid. Under the Mitakshara school of law, payment could doubtless be made to the managing member if he can show that he would be competent to alienate otherwise. But in such a case it would be safer for the Collector to deposit the money and leave the decision to the Court. In the case of a joint family under the Dayabhaga school of law, the invariable practice is to apportion the award in accordance with the admitted shares of the several owners and to pay or deposit the separate amounts according as the parties are competent to alienate. This is the correct procedure.

Sec 269, Act X of 1865

Sec. 90, Act V of 1881

Properties held in Trust.

57. An administrator appointed under the Indian Succession Act is competent to alienate and may be paid. An administrator appointed under Act V of 1881 cannot sell any of the immoveable property which is vested in him without the express permission of the Court which appointed him. Unless such an order is obtained the money must be deposited.

An executor has absolute power to dispose of the property, moveable or immoveable, which vests in him, subject to any restriction imposed by the will by which he is appointed executor. He may therefore be paid unless the will prohibits the sale of the property under acquisition. Before he is paid, probate of the will must be produced and the will must be examined. If it does not expressly or by implication restrict the executor from selling, the executor can be paid. If there are several executors, the receipt of one is sufficient although notices should as a matter of precaution be given to all. Cases have arisen where the claimant appearing before me is an executor claiming under a probate obtained some 20 years ago. In such cases unless the will has established a trust, I should not ordinarily make the award in favour of the

executors but of the heirs under the will, as the presumption would be that the estate had already been administered. The Collector must be careful to notice that the dispositions of a will cannot override the general law as to inheritance by survivorship. Section 4 of the Probate and Administration Act expressly provides that no property shall vest in an executor which would otherwise have passed by survivorship to some other person. Such property does not vest in the executor, and if by mistake any award has been made in his favour in respect of such property, he should not be paid but the money should be deposited.

A trustee cannot be paid unless the terms of the trust, which will ordinarily be proved by the document creating it, expressly provides for the sale of the property by the trustees.

A shebait cannot be paid. As a trustee he has no power to alienate or transfer the capital of the trust, which in his case is represented by the land.

A matwali, provided there is a valid wakf existing, cannot be paid unless the deed creating the wakf expressly provides for this. Such provisions are becoming more common in Calcutta in wills, deeds of gift, and trust deeds generally as the inconvenience thus arising from the compulsory deposit of the money is considerable.

The manager of the estate of a lunatic cannot take payment unless the Court by which he has been appointed authorises him to take payment. Act IV of 1912, secs. 47 and 75.

A receiver appointed by a Court also cannot take payment unless the Court so directs either by a general or special order.

Practice in making payments.

58. It will be seen that in many of these cases a person who is otherwise incompetent to take payment may yet be competent within the meaning of the law by reason of some special circumstance. A Hindu widow, or a natural guardian for instance, would be competent to take payment if acting under legal necessity. A certificated guardian is competent to take payment if acting under the orders of the Court. An executor is competent to take payment unless the will provides that he shall not sell the property. The question then arises whether the Collector should decide such questions and whether he is protected in deciding them. My own opinion is that the Collector must decide such points, and that in deciding them he acts judicially. The point is however doubtful and

until it is settled by authority I would recommend that the Collector should not pay in a case where there is any possible doubt. I give a brief account of my own practice. Hindu widows and females are not paid unless they establish the fact that the property is their own stridhan. As proof of this I would ordinarily accept a registered deed stating that the female had purchased the property in her own name and with her own money. Or in the case of temporary structures such as huts, I would accept evidence that the female had herself constructed them in cases where the landlord recognised her as his tenant. In all other cases I deposit the money even though the reversioners may be willing to join in the receipt. The Collector has no means of ascertaining whether all existing reversioners are before him.

A minor is never paid.

A guardian appointed by the Court is never paid. But if he produces an express order from the Court authorising him to withdraw the money, I pay it.

A natural guardian is never paid unless the sum is very small, say under Rs. 50. In certain cases, where necessity was alleged and was indeed obvious, I have paid. But these cases are exceptional, and such payments are very rarely made. When a joint family is concerned, the award is always partitioned according to the shares. An administrator appointed under Act V of 1881 is never paid without an order from the Court If such an order is produced, he is paid.

An executor is paid unless the will restricts his power to sell. If there is any doubt as to the interpretation of the will, the money is deposited.

An executor can only be paid in respect of property which has vested in him under section 4 of the Probate and Administration Act. Property that would otherwise descend by right of survivorship does not vest in him. In the case of Hindus governed by the Dayabhaga school of law, the property vests absolutely in the testator and at his death in his executors. This would not be the case in families governed by the Mitakshara school of law. In the latter a co-sharer could only dispose by will of his self-acquired property, and this property only would vest in the executor. Under Mahomedan law also only a ⅓rd share can be bequeathed and only this share vests in the executor. The receipt of one executor is sufficient unless there is a direction to the contrary in the will.

A trustee is not paid unless the deed expressly provides for this.

A shebait is never paid.

A matwali is not paid unless the deed expressly provides for this.

The manager of the estate of a lunatic is not paid unless express orders from the Court are produced.

A receiver is not paid unless express orders from the Court are produced.

Further a person whose name must be registered under the Land Registration Act cannot under the instructions of Government be paid if his name is not registered, unless he shows that he has applied for registration and that orders have been passed or that his case is pending. It is doubtful however whether the Collector can insist upon registration.

Identification and method of payment.

59. The rules as to payment are contained in Appendix C of the Accounts Code. They are greatly in need of revision, the form of payment order and cheque being very cumbrous and complicated. Personally I, make all payments by cheque, but in acquisitions in the mofussil small payments to tenants should be made on the spot in cash. When payments are made on the spot, identification will not usually be required in the case of small sums and there is little chance of fraud. When, however, payments are made by cheques, identification is necessary. My own practice is to insist on the parties being identified by some pleader or revenue agent, the name of the identifier being noted on the receipt for the cheque. A formal receipt is taken from each party when the cheque is made over. As the cheque itself forms a receipt, this seems unnecessary, but it is required under the rules. When payment is taken, the Collector should be careful to note on the order sheet of the case whether payment is taken with or without protest. If protest is not made, a reference is barred under section 31(*2*), proviso 2. The usual practice is for the party to note on the receipt "Received under protest." If this note is not made, it is assumed that the payment was without protest. It is however safer for the Collector to record a formal order to this effect on the order sheet.

Before paying the tenants for structures belonging to them, I usually give the landlord an opportunity of claiming any arrears of rent that may be due. If the tenant agrees these are paid out of the amount awarded to him, if he does not agree I give the landlord 14 days' time within which to obtain an order of attachment

from a court. If such an order is not obtained I pay the tenant in full. It has been held in England that the compensation is not subject to a lien for the arrears of rent due, but so far as I know the point has never been determined in India.

Section 31 (3) and (4).

Payment by grant of other lands or by arrangement.

60. With the sanction of the Local Government, which is required in each case, the Collector may arrange with a person having a limited interest to grant other lands in exchange or to grant a remission of revenue in other lands held under the same title. This provision in Calcutta at least is practically never used. It is also provided that there is no limit to the power of the Collector to enter into any arrangement with any person interested in the land who is competent to contract. Persons competent to contract are all persons who have attained the age of majority according to the law to which they are subject and who are of sound mind and not disqualified by any law from contracting: section 11 of the Indian Contract Act IX of 1872. In ordinary acquisition such arrangements are seldom made. In the acquisition for the Calcutta Improvement Trust, very wide use has been made of the clause. In a very large number of cases the Trust exempt a portion of a property on condition that the balance is surrendered. In some cases this is done free of costs. In others, the balance to be paid either by or to the Trust is a matter of arrangement according to the amount of exemption fee levied. Effect is given to such an arrangement by an award embodying the terms of the agreement and such awards are made under the power vested in the Collector by this clause. Even when the person interested has merely a limited interest, he will usually be competent to contract within the meaning of this clause as the arrangement into which he enters is necessary to save the property and is clearly for its benefit. Effect can also be given under this section to a private bargain with any claimant who is competent to contract.

Capitalised value of the Government Revenue.

61. In cases where Government is not paying for the acquisition the Collector must pay the capitalised value of the revenue assessed upon the land into the treasury to the credit of Land Revenue. At the same time he must decide the abatement of revenue to be allowed to the owners. This of course is obvious. If you take a man's land, he cannot be required to pay revenue for it. The amount of the abatement is decided by the award being equal to the revenue of which the

capitalised value has been paid to Government. An abatement statement is then sent to the Collector of the district who checks it. After it is checked it is sent to Government for sanction and when sanctioned by Government, the abatement of revenue takes effect according to rule 1 of the Government rules. Where the area of the land acquired does not exceed one-twentieth of the area of the estate, the Collector may agree with the proprietor that he should continue to pay the whole revenue on condition that the capitalised value of the revenue assessed upon the land is paid to him. This is capitalised according to the number of years' purchase used by the Collector in assessing the compensation for the land.

Section 32.

Reinvestment.

62. When money has been deposited on behalf of some person who is incompetent to alienate it is usually invested by the Court in Government securities, through the Accountant-General, Bengal. The costs of the investment are paid by the Collector on a requisition from the Court. In Government cases where the money is invested in Government securities no costs are paid. Interest is paid through the Court to the person in whose name the money has been deposited and the costs of withdrawing such interest are also payable by the Collector. Courts will not ordinarily invest the money in land unless moved to do so, the practical difficulty being to find any land in which the amount can be invested. A party who desires a deposit invested in land should first endeavour to find some suitable property. Having found one, he should then move the Court to effect the purchase. On receipt of such an application, the Court usually forwards it to the Collector requesting him to make enquiry and report whether the purchase is a suitable one. The Collector values the property and if he thinks it a good investment, he has the title enquired into by a pleader and a draft deed drawn up. If the Court approves of the arrangement, it sanctions the purchase and forwards the money to the Collector who has the deed executed and registered by the vendor and hands over the property to the person interested. In many cases this is much the most satisfactory method of investment, but it is not always easy for the person interested to find a suitable property. When land has been acquired for the Trust that body will usually be willing to sell back a portion of the property to the owner unless it is required for a road or to form

a part of a building site. Sales by the High Court will also afford parties an opportunity of investing monies that have been deposited. More could however be done in this direction if the power of making such investments was vested in the Collector. The compulsory deposit of the money in many cases causes considerable hardship, and I am endeavouring to procure suitable lands for the reinvestment of the money in such cases by public advertisement. In all such cases where money is deposited the circular given in Appendix III is made over to the person interested and if he returns it duly filled up I endeavour to procure a suitable investment.

In the case of service lands such as chaukidari chakran the Government Instructions insist upon reinvestment. The Collector acquires another piece of land under the Act and makes it over to the holder of the service land paying interest at six per cent for the time during which the holder is out of possession. Where there is no claim on account of such land or where there is an excess, the amount is credited to Government under the head "Miscellaneous Revenue"; where the amount awarded as compensation is not sufficient to pay for the new piece of land, the difference will be made good by Government the amount being charged to Land Revenue. In such cases a bill is to be submitted to Government by the Collector in the form prescribed in the Manual.

If a party who can be legally paid does not appear for payment, the Collector must under rules having the force of law deposit the money in the treasury as a revenue deposit giving the party notice that he has done so. As far as possible this should be avoided and the Collector should endeavour to get the parties to come and take payment from him direct, as this is much less trouble to everyone concerned

Powers-of-attorney.

Payment can only be made to the party himself. If it is made to some other person, he must hold either a general power-of-attorney authorising him expressly to take payment in Land Acquisition cases generally or a special power authorising him expressly to take payment in the particular case. The Collector will naturally scrutinise such powers carefully.

Reference.

63. There are two kinds of reference. The first under section 18 is submitted by the Collector on the application of a person interested. This may deal with valuation, apportionment or costs. The second under section 30 is submitted by the Collector on his

own initiative. The latter deals with apportionment only. Government itself can make no reference as to valuation, Ezra *vs.* Secretary of State, I. L. R., 30 Calc., nor can the local authority or company for which Government may be acquiring. If therefore the Collector is in any doubt as to valuation, he should be careful that he does not bind Government or the acquiring body by a decision which may award too much and from which they have no appeal. Where he is in doubt he should always incline to the lower figure for this reason.

Applications for reference under section 18 should state clearly what is the objection to the award. If the objection is as to the valuation, it should be stated definitely what amount is claimed under each head. If the objection is as to the apportionment, it should be stated clearly what is the applicant's claim and how the award should be apportioned. Nothing beyond this is necessary. On receipt of such an application, the Collector is bound to make the reference unless it is barred by law. The following points have to be examined.

Reference barred by consent.

64. (1) A person who has accepted the award can not make a reference. Cases have arisen before me where parties or pleaders acting for them have accepted an award, and have subsequently changed their minds, taken payment under protest and filed an application for reference. Whether in such a case, a reference can be made will be a question of fact in each case. But when a party after discussion and enquiry has definitely accepted a certain sum offered by the Collector as his award, even though the award may not have been finally drawn up and signed, he cannot subsequently in my opinion withdraw from that acceptance. In this office the practice is for the Collector to draw up the award in draft. The parties are informed of this—it is done in their presence—and if they agree to the figure, the signature is taken on the draft as proof that they have accepted the award. The award is then fair copied and signed and notices are issued. If in such a case, a person interested who had accepted the Collector's figure subsequently filed an application for reference, I should reject the application on the ground that the award had been accepted within the meaning of section 18 (1). Section 18 (1).

(2) A person who has taken payment without protest cannot make a reference. This will also in each case be a question of fact. Doubtful cases do occasionally Section 31 (2).

arise. I have seen a case in which the party did not make any note on the receipt that he was taking payment under protest. On the same date however he filed a petition of reference. There was nothing to show whether the petition was filed before or after the receipt was signed. If his petition was filed before he signed the receipt, it might be argued that he had taken payment under protest. On the other hand it might be argued that he had changed his mind after filing the petition. In this particular case I referred the case leaving the Court to decide whether the application was barred or not. But the case shows the need of care in such matters both on the part of the Collector and the parties.

Section 18 (2).

Reference barred by limitation.

65. The application may also be barred by time. If the person making it was present when the Collector made his award, it must be filed within six weeks of the date of the Collector's award. If a notice has been served upon him under section 12, it must be filed within six weeks of the date of receipt of notice. The Tribunal in Calcutta has ruled that formal notice is not necessary and has held that the applicant's receipt on the ordinary receipt form is sufficient to prove that he had notice within the meaning of this section on the date on which this receipt was signed. Also the Tribunal has ruled that substituted service is not sufficient within the meaning of this section and that receipt means actual receipt of the notice by the person named in it. If no notice has been served the application must be filed within six months from the date of the Collector's award and in any case this is the maximum period of limitation. Where there is any doubt, the Collector should give notice to the claimant and after hearing him should by formal order decide whether the reference will be forwarded or not.

Appeal from Collector's Order.

66. There is no provision in the law for any appeal from the Collector's decision rejecting a reference. There can be no appeal to the Tribunal or the special Court as that Court has no jurisdiction at all unless the Collector makes a reference. The High Court has held in one case that the Collector, in refusing a reference under this section on the ground that it is barred, is acting judicially, and that they have the power of revision. There appears to be some doubt as to the correctness of this ruling, but the only remedy which a party has in such a case seems to be to move the High Court. It would certainly appear

that the Collector is acting judicially under this section and also under other sections of the Act, as both here and elsewhere questions both of law and of fact have to be determined before a decision can be made. The limitation must be strictly calculated, that is to say, intervening holidays are not to be excluded although holidays occurring at the end of the period fixed by law are excluded. Time required for obtaining copies is also not to be excluded. Nor does the law give the Collector any discretion in the matter If the application is barred he must refuse to send it on to the Court.

Form of reference.

67. In Bengal a form of reference is prescribed by the Board of Revenue. I give an example of a consolidated reference duly filled in for apportionment and for valuation. The usual practice in this office in all cases is to wait until the period of appeal has expired, *i.e.*, six weeks from the date of service of notice (section 12) and then to submit a consolidated reference dealing with all the disputed points. In submitting the reference the Collector is bound to give the basis of his valuation, if the objection is as to the valuation. He will be well advised usually to state this very briefly, as statements or arguments used by him may prejudice other cases and in my experience I find that the Courts pay little attention to these. If the applicant has made a claim, the amount that can be awarded by the Court cannot be greater than the amount claimed provided that this is not less than the award by the Collector. If the applicant after notice has refused to make any claim or has omitted to make such claim, the Collector's award cannot be increased unless the party had a sufficient reason for omitting to make the claim. It is not the Collector's business to decide whether the party had sufficient reason. That is to be decided by the Court. But the Collector will naturally point out any such defect in making his reference.

Defence of Reference Cases.

68. Reference cases before the Courts are tried out in much the manner of a civil suit, the claimant being the plaintiff and the Collector the defendant. It is the Collector's business to defend his awards and he usually arranges to do this through the Government Pleader. In important cases he may consult the Legal Remembrancer. The Court must give the Collector notice under section 20(*c*) where the objection is one that concerns Government. If the land has been acquired for a local authority or company, the Collector

should send it a copy of the notice so that it may take steps to defend the case if necessary. In order to defend his awards it will be necessary for the Collector to produce evidence as to valuation. Rents may be proved either by actual rent receipts or by the statements of parties. Valuations of structures where this is necessary can be proved by the surveyors who made them. Sales and other transactions can be proved by the deeds with the evidence of the executants and witnesses. The legality of the award itself cannot be questioned by an application under section 18. This can only be done by a regular suit.

It is therefore important that throughout his preliminary and other enquiries the Collector should keep a careful note of any evidence that may subsequently be used to support his valuations if a reference is made and he should be in constant communication with the pleader conducting the cases while these are going on. It is not usual for either party to examine the Collector as to his valuations and if a Collector is summoned to give evidence in this manner he should usually plead privilege. He is not bound to disclose his sources of information to the general public. After its decision the land acquisition Court usually sends a copy of its decree to the Collector ordering him to pay any excess amount that may have been awarded. In making such a payment the Collector will deduct any balance on account of costs that may be due to Government. If an application is rejected and costs are decreed in favour of Government it is the Collector's business to recover these costs. When such costs exceed the compensation awarded the Collector should report the fact to Government and should recommend distinctly that the costs should either be realised or remitted. Parties are generally willing to pay costs on receipt of a notice but if necessary the Collector will take out execution of the decree. In ordinary acquisition the process fees are payable by the party making the reference and should be deposited with the reference. In acquisition for the Calcutta Improvement Trust, the President of the Tribunal has remitted the fees. In references for apportionment Government is not usually made a party and is not in any way interested in the result of the case. It has been held that a Collector cannot make a reference as to apportionment after he has paid away the compensation awarded, 35, Calcutta Weekly Notes, 1104. This decision

is open to question. Personally if an application in such a case were filed before me, I should make the reference and leave the Court to decide whether it would lie. Applications for reference under section 18 must bear a stamp of one anna if the amount awarded is below Rs. 50, and of eight annas if over that sum.

If a reference fails, the Courts may decree costs to Government and this should be pointed out to the parties when the award is made.

Reference.

69. References under section 30 are not subject to limitation and the Collector may make them at any time. The Government instructions provide that a reference made by the Collector must not cover more land than is included in any one of the mile plans used in surveying land for railway acquisitions. My practice with regard to this class of reference is as follows. Section 30

Where there is a dispute and a joint award is made I wait till the period of appeal has expired. If within that time, the parties have not settled the matter and no application under section 18 has been filed, I refer the dispute under section 30 for the decision of the Court. In making a reference under section 30 it is only necessary for the Collector to state very briefly the nature of the dispute.

Other references.

70. There are certain references which a Collector is bound to make of his own motion. These are—

(1) In the case of temporary occupation of land under Part VI of the Act where he and the person interested differ as to the compensation to be paid for the use of the land, the terms of the agreement, or the compensation to be paid when the period of occupation expires. ection 37.

(2) Where land under acquisition is alleged to be part of a house, manufactory or building and the Collector disputes this. Section 19.

In these cases he must make the reference without any application from the parties.

Temporary occupation of land.

71. Part VI of the Act provides for this. The procedure is much the same as in ordinary acquisition and generally the compensation, which is really the rent, will be settled by agreement. An order from the Local Government is sufficient without any declaration under section 6 and the time for which the land is compulsorily leased may not exceed three years. At the expiry of the time, compensation must be paid for any damage done to the land, and if it has been seriously damaged and the person interested in it Section 35.

desire this, it must be acquired permanently. Any dispute between the Collector and the person interested as to this or as to the rent to be paid must be referred by the Collector for the decision of the Court in the usual way.

Part VII.

Acquisition for companies.

72. Before land can be acquired for a company, the previous consent of the Local Government is required and the company must also execute an agreement. The Local Government before consenting must hold a local enquiry in order to satisfy themselves that the land is required for the construction of some work that is likely to prove useful to the public. The terms of the agreement to be executed by the company are detailed in section 41. It must be published in the Gazette of India and the local Gazette. These provisions do not apply in the case of Railways or companies for whose works the Secretary of State for India in Council is bound by agreement to provide lands.

Office routine.

73. Land Acquisition cases are most easily arranged in flat files with an order sheet attached in which is entered every order passed by the Collector. In large cases, in a large basti in Calcutta there may often be 50—100 persons interested. I find that continual reference to the award for the sake of noting payments and to the order sheet leads to these very important documents being very badly torn. I have therefore directed that in all cases the order sheet, the claims, the award and the receipts should be kept separate in a stiff cover, petitions, notices, correspondence, etc., being separated from them. I find that this preserves the important documents and makes the cases easier to handle. In arranging a Land Acquisition case. the notes, reports, valuations, etc., should be kept separately. These are confidential papers and should not be disclosed to the public unless the Collector so orders. I give a detailed description of the procedure adopted in disposing of a case.

(1) As soon as the declaration is issued, a surveyor upon local enquiry and inspection fills up the valuation card and submits it. Certified copies of the District Collector's land registers are also obtained from the Collectorates concerned. The office then enters the survey areas and the names of the registered proprietors on the card.

(2) An order is then passed on the order sheet "Surveyor's report received, issue general and special

notices under sections 9 and 10 to all persons named in it," and notices are issued. I have already dealt with the issue of these notices. As each claim is filed, the fact is noted in the order sheet.

(3) When the claims are filed, the amount claimed is noted against each name on the valuation card in red ink and the name of any person who has claimed but who has not been shown in the card is also entered in red ink and a date is fixed for the Collector's local inspection by an order on the order sheet. Notice is given to the parties and a notice is posted up on the premise.

(4) The Collector then inspects the property and after inspection draws up his draft award. Notice is then given to the landlords and to the acquiring body (and any tenant if his interest is sufficiently large to require further enquiry) to appear for award on a certain date fixed by order on the order sheet.

(5) At this enquiry after hearing the parties, the Collector draws up his award and signs it. Notice is at once issued under section 12 to the parties and a copy of the award is sent to the acquiring body. The award statement is also sent to the audit offices.

(6) Payment is then made. In my office parties are always paid by cheque and a receipt is taken from them in the counterfoil of the cheque. The receipts may either be filed with the record or kept in bound books as counterfoils. In either case the fact of payment and the number of the cheque by which it is made is noted against the name of the payee in the award and the fact that he is paid is noted in the order sheet. A ledger is also maintained in which the payment is entered. When the payment is made the cheque and counterfoils are put up to me with the award, the order sheet and the ledger. I sign the cheques and at the same time initial the entry of payment on the award and in the ledger and the order on the order sheet. For convenience an interval of a week or ten days is allowed between award and payment. During the interval the award is carefully examined to see whether there is any objection to payment and a note is recorded as to this. Any difficulty in the matter of payment is put to the party for any explanation he may have when he appears to take payment.

(7) After payment possession of the property is taken and it is handed over to the acquiring body.

The capitalized value of the Government revenue is paid into the Treasury and the abatement statement is prepared and sent to the Revenue authorities for check. When received back duly countersigned, it is sent to Government for sanction to the abatement of revenue

(8) On the expiry of the period of limitation all disputes and applications for reference are consolidated in one joint reference which is sent to the Court. If money has to be deposited with the reference, this is usually sent to Court at the time of payment in order to avoid the liability to pay interest after the date of taking possession. If there is any doubt as to whether an application for reference will lie, a notice is issued to the party and the fact decided after he has been heard.

(9) The statement in form 18 D is then prepared and sent to the Revenue authorities and after this the record is deposited in the record-room.

The Collector is required to maintain the following registers.

Registers and Returns.

74. (1) *General Register.*—The form is Appendix VIII in the Government Instructions.

(2) In the case of acquisition for Railways he has also to maintain a special register in form Appendix IX.

(3) He is also required to keep a ledger account for each project in the form given in Appendix XXX in the Government Instructions. Where all payments are made by cheque as in my office a much simpler form of ledger may be used.

Statements and Returns.—The Collector is required to make the following returns and statements:—

(1) Statement showing abatement of Land Revenue.

(2) Final report of the acquisition proceedings.

(3) Statement of area of land acquired.

(4) In Railway cases statement showing the disposal of the land acquired. The sales of railway land referred to in the Government Instructions under the Act are not really governed by the provisions of the Act and I do not therefore refer to them.

(5) *Progress Statements.*—The forms are given in Appendices XXXI, XXXII and XXXIII. In addition

the Collector has to submit the following account statements to the audit officer:—

(*i*) Award Statements in Forms A and AA.

(*ii*) Statement in Form B showing the amount awarded by the Court on reference.

(*iii*) Statement in Form CC showing payments made in cash.

Also in forwarding money to the Court or Treasury for deposit, the Collector must send with the amount remitted statements in Form D in triplicate or in Form E in duplicate as the case may be.

These are all the statements required from the Collector.

Notices.

75. The forms of notice to be used by the Collector are given in the Appendices to the Instructions of Government in the Manual. In addition I have found that other notices are required. These are not notices under the Act but are simply information given to the parties by the Collector. The additional notices which I issue are—

(1) Notice fixing the date of inspection.

(2) Notice fixing the date of award.

(3) Notice fixing the date of possession.

The forms which I have introduced for these are given in the Appendix.

Statistics.

76. The collection of statistics is one of the most important duties of the Collector. His valuations will depend almost entirely upon statistics as to rents, sales, previous acquisitions, etc., and it is most important that he should have at hand information as to these. Registers of sales are maintained by the Calcutta Corporation. Copies of this register are always obtained in my office for any locality in which acquisition is taken up. But as I have pointed out sales are no good test of value and it will be sufficient if the Collector enquires as to the particulars of any recent sales in the locality when he actually takes up an acquisition. But in every case that passes through his hands whether he is merely estimating or only acquiring, he should have figures as to rents which, if properly tabulated and arranged, will be of enormous value either to him or to any one else who may have to value adjoining property. And also in cases where he actually acquires, he will have in his

records full details of the valuation of the property and of the materials on which such valuation was based. Also while a scheme is proceeding it is important that the Collector should have some record of such facts to which he can continually refer in deciding other cases. In a large scheme he can not possibly remember all these facts. In order to provide for this I have introduced the following system. The valuations by the surveyors with the names and claims of all persons interested in the land are entered on valuation cards in the forms shown in the Appendix. In these cards the surveyors also enter full details as to the rents paid. These must be entered carefully. My orders are firstly that it is always the total rent collected by the superior landlord which should be shown in the card and secondly that no rent is to be shown unless the area for which such rent is paid is exactly known and is also shown against it. Rent paid for shops is shown separately. A specimen card correctly filled in is shown in the Appendix. These cards are printed on stiff cardboard which is much more easily handled than paper in out of door work. As the cards come in from the surveyors the rent statistics are extracted from them in my office and are tabulated in the form shown being calculated out for each premise according to the rate per 100 square feet. The classification of the properties which is most important and on which the years' purchase to be awarded will ultimately depend is done by the Collector himself. When inspecting the Collector has this card and the rent statement and he can thus compare the rents and classify the properties on the spot. The classification which I have adopted in Calcutta is as follows :—

(1) Vacant land.
(2) Basti land (land with huts).
(3) Tenanted houses (common lodging-houses, etc.)
(4) Residential houses (houses occupied by the owners or by one tenant only).
(5) Business premises. Houses occupied for business either wholly or partly.
(6) Shops. In all my statistics the same classification is used. And in inspecting I note in the column of the rent statement the class in which the property falls.

After inspection the Collector's preliminary valuation and his final award are entered on the valuation

card which thus becomes a complete record of the case in miniature. After award a small index card is prepared from the valuation card for the Collector's card index. I use these index cards in two colours, pink for basti or vacant land and white for pucca structures. The form is given in the Appendix and will show the information entered on them. These index cards with the valuation cards are kept in a card index at the Collector's desk so that he can at a moment ascertain any fact regarding any case that he may have dealt with without the necessity of referring to the record. It is obvious that if he makes an intelligent use of such a record his knowledge of rents and rates paid will ultimately become very extensive. It should in fact be far more extensive than that of any private expert as where the private expert can possibly refer to ten cases the Collector should have personal knowledge of hundreds in which his award has either been accepted or contested, and if it has been contested he will also know the result In addition the card index will show him at a glance how far a scheme has proceeded as the small cards are not prepared until the award is signed. Apart from that he can at any time have statements prepared to show the rates of rent in various localities. the proportion which these bear to the awards, the value of huts, *i.e.*, the rate paid per square foot of plinth area, the percentage of damages to area in shops or to rent, etc. With my final reports I submit certain statements showing the years' purchase paid for each class of property, the percentage of damages awarded, etc. The exact forms of returns are given in the Appendix. Such statements can be prepared from the cards without much trouble and if a fresh classification is needed it can be made by a mere arrangement of the cards. These statistics may take any form which the Collector thinks useful. An example of the use that can be made of them is given in the plan of scheme VIIA which has been acquired for the Improvement Trust showing the rates of rent paid throughout the scheme, and the note attached. Complete statistics for scheme I are also given in the Appendix. It is of course true that these statistics are based on the rent actually paid and that as I have said the Collector does not necessarily value upon the actual rent. But the rental value which the Collector uses is not an ideal rent but the average rent, and the statistics for a large number of cases will therefore be correct enough.

77. The only really satisfactory method of inspecting the work of any office is to examine a certain percentage of the pending cases and of the cases disposed of since the last inspection. From the point of view of the acquiring authority the Collector's acquisitions are practically a series of purchases made by him under the powers vested in him by the Act. The important points to be noted at an inspection are therefore as follows :— **Inspection of Land Acquisition Offices.**

(1). There must be no doubt as to what has been acquired. This will appear from the award. The award should identify the land that has been acquired under it beyond any possibility of doubt. Where there is any possibility of doubt the award should contain a distinct reference to the acquisition plan by which the land can be identified. The boundaries shown in this plan must be fixed with reference to some point that can at any time be identified.

(2). There must be no doubt that the land has been paid for and that the proper persons have been paid or, if for any reason they cannot be paid, that the money has been deposited in Court. The award will also show this and the notes in it as to payment and deposit can be checked with the counterfoils of the cheques and the entries in the account ledgers.

(3). There must be no doubt that the land has been taken over by the Collector and made over by him to the authority for whom it is acquired. This will also appear from the award and the Collector's certificate can be compared with the receipt of the acquiring authority for the land.

78. In addition the inspecting officer should satisfy himself :—

(*a*) that the Collector's awards are not greatly in excess of his estimates ;

(*b*) that he pays a fair price for the interests acquired and that his enquiry as to the valuation is based on sound principles ;

(*c*) that the cases are not unduly delayed and that payments and references are made promptly ;

(*d*) that the information required for audit is promptly sent to the accounts authority and that any audit objections have been answered ; and

(*e*) that the Collector's proceedings are strictly in accordance with the law.

79. In inspecting a Land Acquisition record I should note the following points as I went through it:—

(1) *Fly leaf.*—Each document filed with the record should be noted on the fly leaf as it is filed. Otherwise a fly leaf is of little value.

(2) *Order sheet.*—In an ordinary case the following orders will appear:—

Issue of notices, sections 9 and 10; service of notices (here I should examine a certain number of notices to see that they had been properly served); claims filed with the date of filing each claim; local inspection; enquiry; signing of award; issue of notice of award; payments and date of each payment also whether taken with or without protest; petitions of reference and date of filing each petition of reference; any order refusing a petition of reference and reasons for such order; taking and making over possession; decision of the Civil Court where a reference has been made.

(3) *Notices.*—Public notice (section 9) must invariably be given and there should be a report to this effect on the record. The information upon which the notices under sections 9 and 10 have been issued should be examined. Notices should invariably be given to all registered proprietors and to all persons shown in the settlement records. A local enquiry should also be made as to persons interested. As far as possible notices should be served personally.

(4) *Claims.*—Claims upon receipt should be initialled and dated by the Collector. They should be properly signed and if presented by any other than the persons claiming there should on the record legal authority authorising such person to file them. I should refuse to receive a claim filed by a person who had no written authority.

(5) *Award.*—The Award must identify the land acquired. It must show the area, the compensation allowed and the persons entitled to it according to the Collector's decision. It must also show the capitalised value of the Government revenue and the amount, if any, paid to Government on this account. It will also show against each person the date on which such person has been paid or the date on which the compensation awarded in his favour has been deposited and these entries should be initialled by the Collector. It will also show the date on which

possession has been taken and should bear a certificate as to this signed by the Collector. From these dates a very good idea can be gained of the time taken by the Collector in making payments and the inspecting officer can see if there is any delay. He can also check the particulars as to the Government revenue and compare this with the abatement statement forwarded to the Collector of the District, but as the Collector's proceedings in respect of the Government revenue are already checked independently by the Revenue authorities this is not really of much importance.

(6) *Payments.*—The question of the payments is of much greater importance and on examining the award the inspecting officer should check the entries as to payment with the actual receipts of the payees. These again may be checked with the award statement sent to the accounts officer and the ledger. It should also be noted whether payments are ever made to persons who are not entitled to alienate or to persons other than those named in the award or to persons in whose favour a joint award has been made and if so whether there is sufficient authority on the record for such payments. This is a very important point. If money has been placed in deposit in the Civil Court the receipt of that court should be on the record. If money has been placed in revenue deposit notices should have been issued to the person entitled to it, and the Treasury receipt should be on the record.

(7) *Receipts.*—The receipts will have been checked with the award already. It is only necessary to note that they are duly signed and that the payee has been properly identified. Also where a payment has been taken under protest this should be distinctly noted on the receipt.

(8) *Objections to payment.*—These should be in the form of a petition and should be noted on the order sheet. In no case where objection is taken should the Collector pay and the inspecting officer should see if any such payment has been made.

(9) *Petitions of Reference.*—These should be stamped and court fees should be filed with them as prescribed by Government. If filed by some other person than the person claiming there should be legal authority on the record. If filed without written authority from the person interested I should refuse to receive them. The petition must state the grounds on which objection is taken.

(10) *References*—These should be submitted six weeks after the date of service of notice under section 12, all disputed questions being consolidated in one reference. They should be prepared during this period and should be sent on within a fortnight at the latest of the expiry of the period of limitation. In examining a reference the inspecting officer should note that—

(*a*) The petition was within time.
(*b*) The party refused to accept the award.
(*c*) Payment was taken under protest. Unless these three conditions are fulfilled the reference is barred and should not have been sent on. The Collector in forwarding a reference must give his reasons for the award.

(11) *Order of the Civil Court.*—It should be noted whether payment in accordance with any such order has been promptly made and whether any costs decreed to Government have been realised.

80. An inspection conducted on these lines will give an inspecting officer a very good idea of the manner in which the Collector does his work. As to the Collector's actual estimates and valuations it is impossible for any person to check these unless he is prepared himself to value the property under acquisition. These can therefore be better judged by results than by any office inspection. But the lines of enquiry followed by the Collector and any statistics on which he may rely should be examined, and may be compared with the principles of valuation which I have already outlined.

THE LAND ACQUISITION ACT, 1894
(I OF 1894).

CONTENTS.

PART I.—Preliminary.

SECTIONS.

1. Short title, extent and commencement.
2. Repeal.
3. Definitions.

PART II.—Acquisition.

Preliminary Investigation.

4. Publication of preliminary notification, and powers of officers thereupon.
5. Payment for damage.

Declaration of Intended Acquisition.

6. Declaration that land is required for a public purpose.
7. After declaration, Collector to take order for acquisition.
8. Land to be marked out, measured and planned.
9. Notice to persons interested.
10. Power to require and enforce the making of statements as to names and interests.

Enquiry into Measurements, Value and Claims, and Award by the Collector.

11. Enquiry and award by Collector.
12. Award of Collector when to be final.
13. Adjournment of enquiry.
14. Power to summon and enforce attendance of witnesses and production of documents
15. Matters to be considered and neglected.

SECTIONS.

16. Power to take possession.
17. Special powers in cases of urgency.

PART III.—Reference to Court and Procedure thereon.

18. Reference to Court.
19. Collector's statement to the Court.
20. Service of notice.
21. Restriction on scope of proceedings.
22. Proceedings to be in open Court.
23. Matters to be considered in determining compensation.
24. Matters to be neglected in determining compensation.
25. Rules as to amount of compensation.
26. Form of awards.
27. Costs.
28. Collector may be directed to pay interest on excess compensation.

PART IV.—Apportionment of Compensation.

29. Particulars of apportionment to be specified.
30. Dispute as to apportionment.

PART V.—Payment.

31. Payment of compensation or deposit of same in Court.
32. Investment of money deposited in respect of lands belonging to persons incompetent to alienate.
33. Investment of money deposited in other cases.
34. Payment of interest.

PART VI.—Temporary Occupation of Land.

35. Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.

SECTIONS.

36. Power to enter and take possession, and compensation on restoration.
37. Difference as to condition of land.

PART VII.—Acquisition of Land for Companies.

38. Company may be authorized to enter and survey.
39. Previous consent of Local Government and execution of agreement necessary.
40. Previous enquiry.
41. Agreement with Secretary of State in Council.
42. Publication of agreement.
43. Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.
44. How agreement between Railway Company and Secretary of State may be proved.

PART VIII.—Miscellaneous.

45. Service of notices.
46. Penalty for obstructing acquisition of land.
47. Magistrate to enforce surrender.
48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.
49. Acquisition of part of house or building.
50. Acquisition of land at cost of a local authority or Company.
51. Exemption from stamp duty and fees.
52. Notice in case of suits for anything done in pursuance of Act.
53. Code of Civil Procedure to apply to proceedings before Court.
54. Appeals in proceedings before Court.
55. Power to make rules.

ACT No. I. OF 1894.[1]

[*2nd February*, 1894.]

An Act to amend the law for the acquisition of land for public purposes and for Companies.

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows :—

PART I.—Preliminary.

Short title, extent and commencement.

1. (*1*) This Act may be called the Land Acquisition Act, 1894.

(*2*) It extends to the whole of British India; and

(*3*) It shall come into force on the first day of March, 1894.

Repeal.

2. (*1*) The Land Acquisition Act, 1870, and section 74 of the Punjab Courts Act, 1884, are hereby repealed. X of 1870. XVIII of 1884.

(*2*) But all proceedings commenced, officers appointed or authorized, agreements published and rules made under the said Land Acquisition Act shall, as far as may be, be deemed to have been respectively

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[1] For Statement of Objects and Reason *see* Gazette of India, 1892, Pt. V, p. 32; for Report of the Select Committee, *see ibid*, 1894, Pt. V, page 23; and for Proceedings in Council, *see ibid*, 1892, p 25, and *ibid*, 1894, pp. 19, 24 to 42.

The Act has been declared in force in—

(*1*) Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4, Burma Code, Ed. 1899;

(*2*) Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (III of 1872), s. 3—*see* the revised edition as modified up to 1st October, 1899;

(*3*) Angul District by notification under s. 5 of the Angul District Regulation, 1894 (I of 1894)—*see* Calcutta Gazette, 1901, Pt. I, p. 1534.

The Act has also been declared by notification under the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in (1) the Districts of Hazaribagh, Lohardaga (now called the Ranchi District—*see* Calcutta Gazette, 1899, Pt I, p. 44) and Manbhum, and in Pargana Dhalbhum and the Kolhan in the District of Singhbhum—*see* Gazette of India, 1894, Pt I, p 400; and (2) the District of Palamau, *see* Gazette of India, 1894, Pt. I, p. 639.

It has been extended, by notification under s. 5 of the same Act, to British Baluchistan—*see* Baluchistan Code, Ed 1900, p 114.

commenced, appointed or authorized, published and made under this Act.

(3) Any enactment or document referring to the said Land Acquisition Act or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(a) the expression 'land' includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth:

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land:

(c) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by[1] the Local Government to perform the functions of a Collector under this Act:

(d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the Local Government has appointed[2] (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act:

(e) the expression "Company' means a Company registered under the[3] Indian Companies Act, 1882, or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament or of the Governor General in Council, or by Royal Charter or Letters Patent:

VI of 1882.

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[1] For officers specially appointed under clause (e) in—

(1) Ajmer-Merwara, *see* Gazette of India, 1902, Pt. II, p. 1081;
(2) Bombay, *see* Bombay List of Local Rules and Orders, Vol. 1, Ed. 1896, p. cxlv.

[2] For instance of such an appointment, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 251; and Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxlv.

[3] General Acts, Vol. IV, p. 100

(*f*) the expression "public purpose" includes the provision of village-sites in districts in which the Local Government[1] shall have declared by notification in the official Gazette that it is customary for the Government to make such provision: and

(*g*) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability;

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted:

Provided that—

(*i*) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(*ii*) in every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

(*iii*) the provisions of Chapter XXXI of the Code of Civil Procedure[2] shall, *mutatis mutandis*, XIV of 1882.

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[1] For instances of such notifications, *see* Burma Laws List, Ed. 1897, p. 314; *see* also Burma Gazette, 1899, Pt. I, p 296, and Bombay List of Local Rules and Orders, Ed. 1896, Vol. I, as corrected by authorized Addenda Lists, p. cxlv

[2] *See* now the revised edition of the Code as modified up to 1st December 1899.

apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

(*iv*) no person "entitled to act' shall be competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

PART II.—Acquisition.

Preliminary Investigation.

Publication of preliminary notification, and powers of officers thereupon.

4. (*1*) Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(*2*) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the subsoil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land purposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent

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[1] As to amendments with which this section should be read when land is required for the purposes of a Company, *see* s. 38 (*2*), *infra*.

of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Payment for damage.

5. The officers so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

Declaration of Intended Acquisition.

Declaration that land is required for a public purpose.

6. *(1)* Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

After declaration, Collector to take order for acquisition.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

Land to be marked out, measured and planned.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out He shall also cause it to be measured and (if no plan has been made thereof) a plan to be made of the same.

9. (*1*) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Notice to persons interested.

(*2*) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(*3*) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue-district in which the land is situate.

(*4*) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866.[1]

XIV of 1866.

10. (*1*) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

Power to require and enforce the making of statements as to names and interests.

(*2*) Every person required to make or deliver a statement under this section or section 9 shall be

[1] *See* now the Indian Post Office Act, 1898 (VI of 1898), General Acts, Vol. VI.

deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.[1] XLV of 1860

Enquiry into Measurements, Value and Claims, and Award by the Collector.

Enquiry and award by Collector.

11. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(*i*) the true area of the land;

(*ii*) the compensation which in his opinion should be allowed for the land; and

(*iii*) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

Award of Collector when to be final.

12. (*1*) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(*2*) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

Adjournment of enquiry.

13. The Collector may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

Power to summon and enforce attendance of witnesses and production of documents.

14. For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so

[1] *See* the revised edition as modified up to 1st April, 1903

XIV of 1882.

far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.

Matters to be considered and neglected.

15. In determining the amount of compensation the Collector shall be guided by the provisions contained in sections 23 and 24.

Taking Possession.

Power to take possession.

16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

Special powers in cases of urgency.

17. (*1*) In cases of urgency, whenever the Local Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (*1*), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(*2*) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after publication of the notice mentioned in sub-section (*1*) and with the previous sanction of the Local Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours, notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

(*3*) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on

such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

PART III.—Reference to Court and Procedure thereon.

Reference to Court.

18. (*1*) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(*2*) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

(*a*) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(*b*) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (*2*), or within six months from the date of the Collector's award, whichever period shall first expire.

Collector's statement to the Court.

19. (*1*) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,—

(*a*) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(*b*) the names of the persons whom he has reason to think interested in such land;

(*c*) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11; and

) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

Service of notice.

20. The Court shall thereupon cause a notice specifying the day on which the court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely,—

(*a*) the applicant;

(*b*) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and,

(*c*) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

Restriction on scope of proceedings.

21. The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

Proceedings to be in open Court.

22. Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the province shall be entitled to appear, plead and act (as the case may be) in such proceeding.

Matters to be considered in determining compensation.

23. (*1*) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

first, the market-value of the land at the date of the publication of the declaration relating thereto under section 6;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) *bonâ fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(*2*) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

Matters to be neglected in determining compensation.

24. But the Court shall not take into consideration—

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or,

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the declaration under section 6.

25. (*1*) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11. **Rules as to amount of compensation.**

(*2*) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(*3*) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

26. Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub-section (*1*) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts. **Form of awards.**

27. (*1*) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid. **Costs.**

(*2*) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector; unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court. **Collector may be directed to pay interest on excess compensation.**

PART IV.—Apportionment of Compensation.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall **Particulars of apportionment to be specified.**

be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Dispute as to apportionment.

30. When the amount of compensation has been settled under section XI, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

PART V.—Payment.

Payment of compensation or deposit of same in Court.

31. (*1*) On making an award under section XI, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(*2*) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(*3*) Notwithstanding anything in this section the Collector may, with the sanction of the Local Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(*4*) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of

the Collector to enter into any arrangement with any person interested in the land and [1] competent to contract in respect thereof.

Investment of money deposited in respect of lands belonging to persons incompetent to alienate.

32. (*1*) If any money shall be deposited in Court under sub-section (*2*) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

(*a*) order the money to be invested in the purchase of other lands, to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(*b*) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

(*i*) in the purchase of such other lands as aforesaid; or

(*ii*) in payment to any person or persons becoming absolutely entitled thereto,

(*2*) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely :—

(*a*) the costs of such investments as aforesaid ;

(*b*) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

Investment of money deposited in other cases.

33. When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court

[1] As to persons who are competent to contract, *see* s. 11 of the Indian Contract Act, 1872 (IX of 1872), General Acts, Vol. II, p. 302.

may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

Payment of interest.

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

PART VI—Temporary occupation of Land.

Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.

35. (*1*) Subject to the provisons of Part VII of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(*2*) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(*3*) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

Power to enter and take possession, and compensation on restoration.

36. (*1*) On payment of such compensation, or on executing such agreement or on making a reference under section 35,

the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

Difference as to condition of land.

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

PART VII.—Acquisition of Land for Companies.

Company may be authorized to enter and survey.

38. (1) Subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf, the Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(2) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 5 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

Previous consent of Local Government and execution of agreement necessary.

39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government, nor unless the Company shall have executed the agreement hereinafter mentioned.

Previous enquiry.

40. (1) Such consent shall not be given unless the Local Government be satisfied, by an enquiry held as hereinafter provided,—

(a) that such acquisition is needed for the construction of some work, and

(b) that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of [1] Civil Procedure in the case of a Civil Court. X of 1870.

Agreement with Secretary of State in Council.

41. Such officer shall report to the Local Government the result of the enquiry, and, if the Local Government is satisfied that the proposed acquisition is needed for the construction of work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council, providing to the satisfaction of the Local Government for the following matters, namely:—

(1) the payment to Government of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the Company;

(3) the terms on which the land shall be held by the Company;

(4) the time within which, and the conditions on which, the work shall be executed and maintained; and

(5) the terms on which the public shall be entitled to use the work.

Publication of agreement.

42. Every such agreement shall, as soon as may be after its execution, be published in the Gazette of India, and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.

43. The provisions of sections 39 to 42, both inclusive, shall not apply, and the corresponding sections of the [2] Land Acquisition Act, 1870, shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, under any agreement between such Company and the Secretary of State for India in Council, the Government is, or was, bound to provide land. X of 1870.

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[1] *See* the revised edition as modified up to 1st December, 1899.

[2] Repealed by the present Act.

44. In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

How agreement between Railway Company and Secretary of State may be proved.

PART VIII—Miscellaneous.

45. (*1*) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and in the case of any other notice, by or by order of the Collector or the Judge.

Service of notices.

(*2*) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(*3*) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the [1] Indian Post Office Act, 1866, and service of it may be provided by the production of the addressee's receipt.

XIV of 1866.

46. Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

Penalty for obstructing acquisition of land.

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall

Magistrate to enforce surrender.

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[1] *See* now the Indian Post Office Act, 1898 (VI of 1898), General Acts, Vol. VI, p. 688.

apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Completion of acquisition not compulsory, but compensation to be awarded when not completed.

48. (*1*) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(*2*) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(*3*) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

Acquisition of part of house or building.

49. (*1*) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired:

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(*2*) If in the case of any claim under section 23, sub-section (*1*), *thirdly*, by a person interested, on

account of the severing of the land to be acquired from his other land the Local Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(*3*) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the Local Government to the person interested, and shall thereafter proceed to make his award under section 11.

Acquisition of land at cost of a local authority or Company.

50. (*1*) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

(*2*) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

Exemption from stamp-duty and fees.

51. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Notice in case of suits for anything done in pursuance of Act.

52. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

Code of Civil Procedure to apply to proceedings before Court.

XIV of 1882

53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act.

Appeals in proceedings before Court.

XIV of 1882.

54. Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceedings under this Act.

Power to make rules.

55. (*1*) The Local Government shall have power to make rules[1] consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

(*2*) The power to make, alter and add to rules under sub-section (*1*) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(*3*) All such rules, alterations and additions shall, when sanctioned by the Governor General in Council, be published in the official Gazette, and shall thereupon have the force of law.

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[1] For rules under this section for—

(*1*) Ajmer Merwara, *see* Ajmere List of Local Rules and Orders, Ed. 1902, p 12,

(*2*) Central Provinces, *see* Central Provinces List of Local Rules and Orders Ed 1896, p 59,

(*3*) United Provinces of Agra and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed 1894, p 40

THE LAND ACQUISITION (MINES) ACT, 1885.

CONTENTS.

SECTIONS.

1. Short title, commencement and local extent.
2. Saving for mineral rights of the Government.
3. Declaration that mines are not needed.
4. Notice to be given before working mines lying under land.
5. Power to prevent or restrict working.
6. Mode of determining persons interested and amount of compensation.
7. If Local Government does not offer to pay compensation, mines may be worked in a proper manner.
8. Mining communications.
9. Local Government to pay compensation for injury done to mines.
10. And also for injury arising from any airway or other work.
11. Power to officer of Local Government to enter and inspect the working of mines.
12. Penalty for refusal to allow inspection.
13. If mines worked contrary to provisions of this Act, Local Government may require means to be adopted for safety of land acquired.
14. Construction of Act when land acquired has been transferred to a local authority or Company.
15. Pending cases.
16. Definition of local authority and Company.
17. This Act to be read with Land Acquisition Act, 1870.

ACT No. XVIII OF 1885.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 16th October, 1885.)

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870; It is hereby enacted as follows :— X of 1870.

Short title, commencement and local extent.

1. (*1*) This Act may be called the Land Acquisition (Mines) Act, 1885; and

(*2*) It shall come into force at once.

(*3*) It extends in the first instance to the territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal, but any other Local Government may, from time to time, by notification in the official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

Saving for mineral rights of the Government.

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals.

Declaration that mines are not needed.

3. (*1*) When the Local Government makes a declaration under section 6 of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed. X of 1870.

(2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the Land Acquisition Act, 1870, and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11 of the said Land Acquisition Act in respect of the mines, and may—

X of 1870.

(a) when he makes an award under section 14 of that Act, insert such a statement in his award;

(b) when he makes a reference to the Court under section 15 of that Act, insert such a statement in his reference; or

(c) when he takes possession of the land under section 17 of that Act, publish such a statement in such manner as the Governor General in Council may, from time to time, prescribe.

(3) If any such statement is inserted in the declaration, award or reference, or published as aforesaid, the mines of coal, iron-stone, slate or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in the Government when the land so vests under the said Act.

Notice to be given before working mines lying under land.

4. If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Local Government notice in writing of his intention so to do sixty days before the commencement of working.

Power to prevent or restrict working.

5. (1) At any time or times after the receipt of a notice under the last foregoing section, and whether before or after the expiration of the said period of sixty days, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose; and

(2) If it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the Local Government may publish, in such manner as the Governor General in Council may, from time to time, direct, a declaration of its willingness, either—

(a) to pay compensation for the mines or minerals still unworked or ungotten, or that part

thereof, to all persons having an interest in the same; or

(*b*) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the Local Government may in its declaration specify.

(*3*) If the declaration mentioned in case (*a*) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(*4*) If the declaration mentioned in case (*b*) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the Local Government.

Mode of determining persons interested and amount of compensation.

6. When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act, 1870, for ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively. X of 1870.

If Local Government does not offer to pay compensations, mines may be worked in a proper manner.

7. (*1*) If before the expiration of the said sixty days the Local Government does not publish a declaration as provided in section 5, the owner, lessee or occupier of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

(*2*) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, at his own expense, repair the damage or remove the obstruction, as the case may require.

(*3*) If the repair or removal is not at once effected, or, if the Local Government so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the Local Government may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain and work their said mines; but no such airway, headway, gateway or water-level shall be of greater dimensions or section than may be prescribed by the Governor General in Council in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof.

Mining communications.

9. The Local Government shall, from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Local Government which cannot be obtained by reason of the action taken under the foregoing sections; and if any dispute or question arises between the Local Government and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870.

Local Government to pay compensation for injury done to mines.

X of 1870.

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the Local Government shall pay full compensation to that owner or

And also for injury arising from any airway or other work.

occupier of the surface lands for the loss or damage so sustained by him.

Power to officer of Local Government to enter and inspect the working of mines.

11. For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being, or are about to be worked.

Penalty for refusal to allow inspection.

12. If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the Local Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees.

If mines worked contrary to provisions of this Act, Local Government may require means to be adopted for safety of land acquired.

13. If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired and the works thereon, and preventing injury thereto; and if, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the Local Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

Construction of Act when land acquired has been transferred to a local authority or Company.

14. When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to or has vested by operation of law in a local authority or Company, then sections 4 to 13, both inclusive, shall be read as if for the words "the Local Government," wherever they occur in those sections, the words "the local authority or Company, as the case may be, which has acquired the land" were substituted.

Pending cases.

15. (*1*) This Act shall apply to any land for the acquisition whereof proceedings under the Land

of 1 Acquisition Act, 1870, are pending at the time when this Act comes into force, unless before that time the Collector has made, in respect of the land, an award under section 14 or a reference to the Court under section 15 of that Act, or has taken possession of the land under section 17 of the same.

(2) When the Collector has before the said time made an award or reference in respect of any such land or taken possession thereof as aforesaid, and all the persons interested in the land, or entitled under the Land Acquisition Act, 1870, to act for persons so interested, who have attended or may attend in the course of the proceedings under sections 11 to 15, both inclusive, of the Land Acquisition Act, 1870, consent in writing to the application of this Act to the land, the Collector may by an order in writing direct that it shall apply, and thereupon it shall be deemed to have applied from the commencement of the proceedings; and the Collector shall be deemed, as the case may be, to have inserted in his award or reference, or to have published in the prescribed manner, when he took possession, the statement mentioned in section 3 of this Act.

X of 1870

X of 1870

Definition of local authority and Company.

16. In this Act—

(*a*) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund; and

(*b*) "Company" means a Company registered under any of the enactments relating to Companies from time to time in force in British India, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

This Act to be read with Land Acquisition Act, 1870.

17. This Act shall, for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870.

X of 1870.

Extracts from Bengal Act V of 1911 relating to the compulsory acquisition of land by the Board of Trustees for the Improvement of Calcutta.

BENGAL ACT V OF 1911.[1]

(THE CALCUTTA IMPROVEMENT ACT, 1911).

As modified up to the 1st December, 1915.

An Act to provide for the Improvement and Expansion of Calcutta.

WHEREAS it is expedient to make provision for the improvement and expansion of Calcutta by opening up congested areas, laying out or altering streets, providing open spaces for purposes of ventilation or recreation, demolishing or constructing buildings, acquiring land for the said purposes and for the rehousing of persons of the poorer and working classes displaced by the execution of improvement schemes, and otherwise as hereinafter appearing;

And whereas it is expedient that a Board of Trustees should be constituted and invested with special powers for carrying out the objects of this Act;

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[1] LOCAL EXTENT.—This Act (except sections 82 to 86) extends only to the Calcutta Municipality—*see* s. 1 (*3*).

Section 82 originally extended throughout Bengal as constituted in the year 1911, *i.e.*, to (*1*) the present Presidency of Fort William in Bengal except Eastern Bengal, and (*2*) the Province of Bihar and Orissa.

This section has since been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), s. 3, Sch. I, printed in the Bengal Code, Ed. 1913-1915, Vol. III, pp. 859, 861.

Section 83 extends to—(*1*) railway stations in the Calcutta and Howrah Municipalities, and (*2*) certain landing-places in the Port of Calcutta;

Section 84 extends to the Port of Calcutta;

Section 85 extends to Calcutta;

Section 86 has the same local extent as sections 82, 83 and 84. So far as it affects s. 82, it has been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), s. 3, Sch. I, printed in the Bengal Code, Ed. 1913-1915, Vol. III, pp. 859, 861.

Several sections of the Act (*e.g.*, ss. 40 to 52, 54 to 56, 63, 66, 149, 163, 167, 168) contemplate that operations of the Board of Trustees constituted under it may be carried on in areas beyond the Calcutta Municipality, and section 1 (*3*) gives power to extend provisions of the Act to such areas.

And whereas the sanction of the Governor General has been obtained, under section 5[1] of the Indian Councils Act, 1892, to the provisions of this Act, which affect Acts passed by the Governor General of India in Council;

55 & 56 Vict., c. 14.

And whereas the sanction of the Governor General has also been obtained, under section 43[2] of the Indian Councils Act, 1861, to the enactment of the provisions of Chapter V of this Act, relating to taxation;

24 & 25 Vict., c. 67.

It is hereby enacted as follows:—

Chapter I.—Preliminary.

Short title, commencement and extent.

1. (*1*) This Act may be called the Calcutta Improvement Act, 1911.

(*2*) It shall come into force on such day[3] as the Local Government may, by notification, direct.

(*3*) Except as otherwise hereinafter provided, this Act shall extend only to the Calcutta Municipality; but any provision which extends only to the Calcutta Municipality may be extended by the Local Government, entirely or in part, by notification,[4] under the procedure prescribed by section 148, to any specified area in the neighbourhood of that Municipality.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "the Board" means the Board of Trustees for the Improvement of Calcutta, constituted under this Act;

[5][(*aa*) "building line" means a line (in rear of the street alignment) up to which the main wall of a building abutting on a projected public street may lawfully extend;]

(*b*) "the Calcutta Municipality" means "Calcutta" as defined in clause (*7*) of section 3 of the Calcutta Municipal Act, 1899[6];

Ben. Act III of 1899.

(*c*) "Chairman" means the Chairman of the Board;

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[1] Printed in the Collection of Statutes relating to India, 1913, Vol. II, p. 804.

[2] Printed in the Collection of Statutes relating to India, 1913, Vol. I, p. 324.

[3] *i.e.*, the 2nd January, 1912—*see* Notification No. 1148, dated the 30th October 1911, printed in the Bengal Local Statutory Rules and Orders, 1912, Vol. III, p. 1497.

[4] For a notification issued under section 1 (*3*), *see* the Bengal Local Statutory Rules and Orders, 1912, Vol. III, p. 1497, and for a further notification, see Calcutta Gazette, 1914, Pt. IB, p. 171.

[5] Clause (*aa*) was inserted by the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915), s. 2 (*a*).

[6] Printed in the Bengal Code, Ed. 1913-1915, Vol. III, p. 219.

(*d*) "the Corporation" means the Corporation of Calcutta constituted under the said Calcutta Municipal Act, 1899[1];

(*e*) "the General Committee" means the General Committee constituted under the said Calcutta Municipal Act, 1899[1];

(*f*) "improvement scheme" means a general improvement scheme or a street scheme, or both,[2] [but does not include a projected public street referred to in section 63];

(*g*) "land" has the same meaning as in clause (*a*) of section 3[3] of the Land Acquisition Act, 1894; I of 1894

(*h*) "municipal assessment-book" means the assessment-book kept under section 164 of the Calcutta Municipal Act, 1899[1], or the valuation and rating list prepared under section 103[4] of the Bengal Municipal Act, 1884; Ben Act III of 1899. Ben Act III of 1884

(*i*) "notification" means a notification published in the Calcutta Gazette;

(*k*) "Secretary to the Board" means the person for the time being appointed by the Board to discharge the functions of Secretary to the Board;

(*l*) the "Tribunal" means the Tribunal constituted under section 72;

(*m*) "Trustee" means a Member of the Board; and

(*n*) the expressions[5] * * * "drain," "public street" and "street alignment" have the same meaning as in clauses[5*] (*16*) (*37*) and (*47*), respectively, of section 3 of the Calcutta Municipal Act, 1899[1]. Ben Act III of 1899

Compulsory Acquisition.

Power to acquire land under the Land Acquisition Act, 1894.

69. The Board may, with the previous sanction of the Local Government, acquire land under the provisions of the Land Acquisition Act, 1894[3], for carrying out any of the purposes of this Act. I of 1894.

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[1] Printed in the Bengal Code. Ed., 1913-15, Vol III, p 219

[2] These words enclosed in square brackets were added by the Calcutta Improvement (Amendment) Act, 1915 (Ben Act III of 1915), s 2 (*b*)

[3] Printed in the General Acts, Ed 1909, 1887-97, p 363

[4] Printed in the Bengal Code, Ed. 1913-1915, Vol II, p 750

[5] The words "building line" and the figure and brackets "(3)" were repealed by the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915), s 2 (*c*)

70. A Tribunal shall be constituted, as provided in section 72, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894[1]. **Tribunal to be constituted.**

I of 1894.

71. For the purpose of acquiring land under the said Act[2] for the Board,— **Modification of the Land Acquisition Act, 1894.**

(*a*) the Tribunal shall (except for the purposes of section 54 of that Act[2]) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act[2];

(*b*) the said Act[2] shall be subject to the further modifications indicated in the Schedule;

(*c*) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908[3]; and

V of 1908.

(*d*) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894[1], and shall be final[4].

I of 1894.

72. (*1*) The said Tribunal shall consist of a President and two assessors. **Constitution of Tribunal.**

(*2*) The President of the Tribunal shall be either—

(*a*) a member of the Judicial Branch of the Imperial or Provincial Civil Service, of not less than ten years' standing in such Service, who has, for at least three years, served as District Judge or held judicial office not inferior to that of a Subordinate Judge; or

(*b*) a barrister, advocate or pleader of not less than ten years' standing, who has practised as an advocate or pleader in the Calcutta High Court.

(*3*) The President of the Tribunal and one of the assessors shall be appointed by the Local Government,

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[1] Printed in the General Acts, Ed. 1909, 1887-97, p. 363.

[2] The Land Acquisition Act, 1894. It is printed in the General Acts, Ed. 1909, 1887-97, p. 363.

[3] Printed in the General Acts, Ed. 1909, 1904-09, p. 141.

[4] As to appeals to the High Court from decisions of the President of the Tribunal, *see* the Calcutta Improvement (Appeals) Act, 1911 (XVIII of 1911), printed in the Bengal Code, Ed. 1913-1915, Vol. I, p. 771.

and the other assessor shall be appointed by the Corporation, or, in default of the Corporation, by the Local Government:

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or is, for any of the reasons mentioned in section 9, disqualified for appointment as a Trustee.

(*4*) The term of office of each member of the Tribunal shall be two years; but any member shall, subject to the proviso to sub-section (*3*), be eligible for reappointment at the end of that term.

(*5*) The Local Government may, on the ground of incapacity or misbehaviour, or for any other good and sufficient reason, cancel the appointment of any person as a member of the Tribunal.

(*6*) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any other unavoidable cause, the Local Government or (if the person whose place is to be filled was appointed by the Corporation) the Corporation, or, in default of the Corporation, the Local Government, shall forthwith appoint a fit person to be a member in his place.

(*7*) All appointments made under this section shall be published by notification.

Remuneration of members of Tribunal.

73. Each member of the Tribunal shall be entitled to receive such remuneration, either by way of monthly salary or by way of fees, or partly in one of those ways and partly in the other, as the Local Government may prescribe.

Officers and servants of Tribunal.

74. (*1*) The President of the Tribunal shall, from time to time, prepare a statement showing—

(*a*) the number and grades of the clerks and other officers and servants whom he considers should be maintained for carrying on the business of the Tribunal,

(*b*) the amount of the salary to be paid to each such officer and servant, and

(*c*) the contributions payable under section 146 in respect of each such officer and servant.

(*2*) The President of the Tribunal shall, from time to time, make rules—

(*i*) for regulating the grant of leave of absence, leave-allowances and acting-allowances to the officers or servants of the Tribunal; and

(*ii*) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Tribunal (other than any servant of the Government in respect of whom a contribution is paid under section 146) to contribute to such fund, at such rates and subject to such conditions as may be prescribed by such rules, and, with the sanction of the Board, for supplementing such contributions out of the funds of the Board:

Provided that a Government servant employed as an officer or servant of the Tribunal shall not be entitled to leave or leave-allowances otherwise than as may be prescribed in any general or special orders of the Government for regulating the transfer of Government servants to foreign service.

(*3*) All statements prepared under sub-section (*1*), and all rules made under sub-section (*2*), shall be subject to the previous sanction of the Local Government.

(*4*) Subject to any directions contained in any statement prepared under sub-section (*1*) and any rules made under sub-section (*2*), and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Tribunal, and the power of reducing, suspending or dismissing them, shall vest in the President of the Tribunal.

Payments by Board on account of Tribunal.

75. The remuneration prescribed under section 73 for members of the Tribunal, and the salaries, leave-allowances and acting-allowances prescribed under section 74 for officers and servants of the Tribunal, shall be paid by the Board to the President of the Tribunal for distribution.

Power to make rules for Tribunal.

76. (*1*) The President of the Tribunal may, from time to time, with previous sanction of the Local Government, make rules[1], not repugnant to the Code of Civil Procedure, 1908[2], for the conduct of business by the Tribunal.

V of 1908.

(*2*) All such rules shall be published by notification.

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[1] For rules issued under s. 76 (*1*), see Calcutta Gazette, 1915, Pt. 1, p. 53.
[2] Printed in the General Acts, Ed. 1909, 1904-09, p. 141.

Award of Tribunal how to be determined.

77. (*1*) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894[1],— I of 1894.

(*a*) if there is any disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail;

(*b*) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of the assessors if the President of the Tribunal considers their presence unnecessary; and, when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal; and

(*c*) notwithstanding anything contained in the foregoing clauses, the decision on all questions of law and procedure shall rest solely with the President of the Tribunal.

(*2*) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by the Court of Small Causes of Calcutta as if it were a decree of that Court.

Abandonment of Acquisition.

Abandonment of acquisition in consideration of special payment.

78. (*1*) In any case in which the Local Government has sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Board, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf.

(*2*) The Board shall admit every such application if it—

(*a*) reaches them before the time fixed by the Collector, under section 9 of the Land Acquisition Act, 1894,[1] for making claims in reference to the land, and I of 1894.

[1] Printed in the General Acts, Ed. 1909, 1887-97, p. 363.

(*b*) is made by all persons who have interests in the land greater than a lease for years having seven years to run.

(*3*) If the Board decide to admit any such application, they shall forthwith inform the Collector; and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the Board shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(*4*) Within the said period of three months, or, with the permission of the Board, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894,[1] the person from whom the Board have arranged to accept the sum so fixed may, if the Board are satisfied that the security offered by him is sufficient, execute an agreement with the Board, either—

I of 1894.

(*i*) to pay the said sum three years after the date of the agreement, or

(*ii*) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at the rate of four *per cent. per annum*, and to make the first annual payment of such interest four years after the date of the agreement:

Provided that the Board may, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894,[1] accept immediate payment of the said sum instead of an agreement as aforesaid.

I of 1894.

(*5*) When any agreement has been executed in pursuance of sub-section (*4*), or when any payment has been accepted in pursuance of the proviso to that sub-section, in respect of any land, the proceedings for the acquisition of the land shall be deemed to be abandoned.

(*6*) Every payment due from any person under any agreement executed under sub-section (*4*) shall be a charge on the interest of that person.

(*7*) If any instalment of interest payable under an agreement executed in pursuance of clause (*ii*) of sub-section (*4*) be not paid on the date on which it is due, the sum fixed by the Board under sub-section (*3*)

[1] Printed in the General Acts, Ed. 1909, 1887-97, p. 363.

shall be payable on that date, in addition to the said instalment.

(*8*) At any time after an agreement has been executed in pursuance of clause (*ii*) of sub-section (*4*), any person may pay off the charge created thereby, with interest, at the rate of four *per cent. per annum*, up to the date of such payment.

(*9*) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (*4*), no suit with respect to such agreement shall be brought against the Board by any other person (except an heir, executor or administrator of the person first aforesaid) claiming to have an interest in the land.

Recovery of money payable in pursuance of section 78.

79. When an agreement has been executed by any person in pursuance of section 78, sub-section (*4*), in respect of any land, and any money payable in pursuance of that section is not duly paid, the same shall be recoverable by the Board (together with interest, up to the date of realization, at the rate of four *per cent. per annum*), from the said person or his successor in interest in such land, in the manner provided by the Calcutta Municipal Act, 1899,[1] for the recovery of the consolidated rate; Ben. Act III of 1899.

and, if not so recovered, the Chairman may, after giving public notice of his intention to do so, and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.

Agreement or payment under section 78 not to bar acquisition under a fresh declaration.

80. If any land in respect of which an agreement has been executed, or a payment has been accepted, in pursuance of section 78, sub-section (*4*), be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894[2]. I of 1894

Disposal of Land.

Power to dispose of land.

81. (*1*) The Board may retain, or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by them under this Act.

[1] Printed in the Bengal Code, Ed. 1913-15, Vol. III, p. 219.
[2] Printed in the General Acts, Ed. 1909, 1887-97, p. 363.

(*2*) Whenever the Board decide to lease or sell any land acquired by them under this Act from any person, they—

(*a*) shall give notice by advertisement in local newspapers, and

(*b*) shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land, at a rate to be fixed by the Board, if the Board consider that such a right can be given without detriment to the carrying out of the purposes of this Act.

(*3*) If in any case two or more persons claim to exercise a right offered under clause (*b*) to take on lease or to purchase any land, the right shall be exerciseable by the person who agrees to pay the highest sum for the land, not being less than the rate fixed by the Board under that clause, to the exclusion of the others.

THE SCHEDULE.

(*Referred to in section 71*).

FURTHER MODIFICATIONS IN THE LAND ACQUISITION ACT 1894[1].

I of 1894.

Amendment of section 3.

1. After clause (*e*) of section 3 the following shall be deemed to be inserted, namely :—

"(*e1*) the expression 'local authority' includes the Board of Trustees constituted under the Calcutta Improvement Act, 1911."

Ben. Act V of 1911.

Amendment of section 11.

2. To section 11 the following shall be deemed to be added, namely :—

"and

"(*iv*) the costs which, in his opinion, should be allowed,

to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen *per centum* mentioned in section 23, sub-section (*2*),

[1] Printed in the General Acts, Ed. 1909, 1887-97, p. 363.

as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

"The Collector may disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant."

Amendment of section 15.

3. In section 15, for the word and figures "and 24" the figures, word and letter "24, and 24A" shall be deemed to be substituted.

Amendment of section 17.

4. (*1*) In section 17, sub-section (*3*), after the figures "24" the words, figures and letter "or section 24A" shall be deemed to be inserted.

(*2*) To the said section 17 the following shall be deemed to be added, namely :—

"(*4*) Sub-sections (*1*) and (*3*) shall apply also in the case of any area which is stated in a certificate granted by a salaried Presidency Magistrate or a Magistrate of the first class to be unhealthy.

"(*5*) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (*3*) of section 9, and shall hear without any avoidable delay any objections which may be urged by them.

"(*6*) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession."

New section 17A.

5. After section 17 the following shall be deemed to be inserted, namely :—

"17 A. In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition."

Transfer of land to Board

Amendment of section 18.

6. At the end of section 18, sub-section (*1*), the words "or the amount of the costs allowed" shall be deemed to be inserted.

Amendment of section 19.

7. After the words "amount of compensation," in clause (*c*) of section 19, the words "and of costs (if any)" shall be deemed to be inserted.

8. After the words "amount of the compensation," in clause (*c*) of section 20, the words "or costs", shall be deemed to be inserted. **Amendment of section 20.**

9. (*1*) In sub-section (*2*) of section 23, after the words "in every case" the following shall be deemed to be inserted, namely:— **Amendment of section 23.**

Ben Act V of 1911

"except where the land acquired is situated in the Calcutta Municipality and within the area comprised in an improvement scheme sanctioned under the Calcutta Improvement Act, 1911."

(*2*) At the end of section 23 the following shall be deemed to be added, namely:—

"(*3*) For the purposes of clause *first* of sub-section (*1*) of this section,—

(*a*) the market-value of the land shall be deemed to be the market-value according to the disposition of the land at the date of the publication of the declaration relating thereto under section 6;

(*b*) if it be shown that, before such declaration was published, the owner of the land had taken active steps and incurred expenditure to secure a more profitable disposition of the same, further compensation, based on his actual loss, may be paid to him;

[1](*bb*) if the market-value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded;

[1](*bbb*) if any person, without the permission of the Chairman required by section 63, sub-section (*8*), of the Calcutta Improvement Act, 1911, has erected, re-erected or added to any wall (exceeding ten feet in height) or building within the street alignment or

Ben. Act V of 1911.

[1] These clauses (*bb*) and (*bbb*) were inserted by the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915), s. 9.

building line of a projected public street, then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded ;]

(*c*) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the aforesaid declaration was published, such increase shall be disregarded, unless it be proved that the improvement was made *bonâ fide* and not in contemplation of proceedings for the acquisition of the land being taken under this Act;

(*d*) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary uses; and

(*e*) if the market-value of any building is specially high in consequence of the building being so over-crowded as to be dangerous to the health of the inmates, such over-crowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from over-crowding."

Amendment of section 24.

10. For clause *seventhly* of section 24 the following shall be deemed to be substituted, namely :—

"*seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date of the publication of the declaration under section 6, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

11. After section 24 the following shall be deemed to be inserted, namely :— **New section 24A.**

"24A. In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions namely,— Further provisions for determining compensation.

(*1*) when any interest in any land acquired under this Act has been acquired after the date of the publication of the declaration under section 6, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation, to be paid for such land ;

(*2*) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, *minus* the estimated cost of putting it into such condition or state ;

(*3*) if, in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, *minus* the cost of demolishing the building."

12. (*1*) After the words "the compensation" in sub-section (*1*) of section 31, and after the words "the amount of the compensation" in sub-section (*2*) of that section the words "and costs (if any)" shall be deemed to be inserted. **Amendment of section 31.**

(*2*) After the words "any compensation" in the concluding proviso to sub-section (*2*) of section 31 the words "or costs" shall be deemed to be inserted.

13. After section 48 the following shall be deemed to be inserted, namely :— **New sections 48A and 48B.**

"48A. (*1*) If, within a period of two years from the date of the publication of the declaration under section 6, in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall be entitled to receive compensation for the damage suffered by him in consequence of the delay. Compensation to be awarded when land not acquired within two years.

(*2*) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

Sections 48 and 48A not to apply in certain cases

"48B. No compensation shall be payable in pursuance of section 48 or section 48A when proceedings for the acquisition of land have been abandoned on the execution of an agreement, or the acceptance of a payment, in pursuance of sub-section (*4*) of section 78 of the Calcutta Improvement, Act, 1911." Ben Act V of 1911

Amendment of section 49.

14. After sub-section (*1*) of section 49, the following shall be deemed to be inserted, namely :—

"(*1a*) For the purposes of sub-section (*1*), land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house."

ACT No. XVIII OF 1911.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 23rd September 1911.)

An Act to modify certain provisions of the Calcutta Improvement Act, 1911.

Ben Act V of 1911

WHEREAS it is expedient to modify the provisions of the Calcutta Improvement Act, 1911, so as to provide in certain cases for an appeal to the High Court from the awards of the Tribunal constituted under that Act; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Calcutta Improvement (Appeals) Act, 1911.

Definitions.

2. In this Act—

(*1*) "Court" means the High Court of Judicature at Fort William in Bengal: and

(*2*) "Tribunal" has the same meaning as in the Calcutta Improvement Act, 1911.

Ben. Act V of 1911

Ben Act V of 1911

Appeal from awards of the Tribunal.

3. (*1*) Notwithstanding anything contained in the Calcutta Improvement Act, 1911, an appeal shall lie to the Court in any of the following cases, namely:—

(*a*) where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (*b*) of section 77 of the said Act:

(*b*) where the decision is that of the Tribunal, and

(*i*) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(*ii*) the Court grants special leave to appeal:

Provided that the Court shall not grant such special leave unless the President has refused to grant a certificate under sub-clause (*i*) and the amount in dispute is five thousand rupees or upwards.

(*2*) An appeal under clause (*b*) of sub-section (*1*) shall only lie on the following grounds, namely :—

(*i*) the decision being contrary to law or to some usage having the force of law;

(*ii*) the decision having failed to determine some material issue of law or usage having the force of law;

(*iii*) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

Procedure in such appeals.

4. Subject to the provisions of section 3, the provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees shall, so far as may be, apply to appeals under this Act. V of 1908.

Execution of order of Court.

5. The Chief Judge of the Court of Small Causes of Calcutta shall, on application, execute any order passed by the Court on appeal as if it was a decree made by himself.

Period of limitation for such appeals.

6. An appeal under section 3 shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of No. 156 of the First Schedule to the Indian Limitation Act, 1908. V of 1908. IX of 1908.

APPENDIX I.

Exemption of property declared for acquisition under section 78, Bengal Act V of 1911 and the right of pre-emption conferred under section 81 on the owners of property which has been acquired.

1. The Calcutta Improvement Act of 1911 provides for the abandonment of the acquisition of land which is not required for the execution of a scheme. The provisions as to this are contained in sections 78, 79 and 80. All questions of exemption are decided by the Improvement Trust. The Land Acquisition Collector is not in any way concerned with them. When the particular case has been decided by the Board of Trustees the Collector acquires all land which has not been exempted, but he has nothing whatever to do with the question of exemption and applications with regard to this should not therefore be filed before him. Similarly the Improvement Trust have no concern with the actual acquisition except that they are entitled to adduce evidence before the Collector. Applications and petitions which are in any way connected with proceedings under Act I of 1894 should therefore be filed before the Collector and not before the Chairman of the Inprovement Trust. The Land Acquisition Collectors are Government Officers working under Government and are not a department of the Improvement Trust. I point this out as errors of this kind are very commonly made both by parties and by their pleaders. **Exemption on payment of fee.**

2. There is at present much uncertainty as to the exact meaning of the law. According to the view hitherto adopted by the Board of Trustees an Improvement Scheme may include besides the area actually required for the new roads and improvements all the surrounding lands which will be affected by the rise in value resulting from the proposed improvements. The intention being that the general tax-payer, as represented by the Trust, should profit by this rise in value and not the particular landlord whose land happens to lie within the scheme. The law according to them allows the Trust either to acquire the surrounding lands at their market value before the improvements are made and to sell them or, in the alternative, to levy a fee from the landlords whom they allow to retain the land and who will as a result profit by the rise in value caused by the improvements made at the expense of the general tax-payer. This fee is the exemption fee fixed under section 78. **Right of Trust to acquire surrounding lands.**

In a recent decision however in the case of Chandra Kanto Ghose *versus* the Board of Trustees for the Improvement of Calcutta two Judges of the Calcutta High Court have held that the Improvement Trust have no power to acquire lands which are not required for the actual roads or open spaces. In a previous case a single Judge took the opposite view and held

that the Trust was entitled to acquire lands which had been included in an Improvement Scheme as being affected in value by the proposed improvements. The question will probably be settled soon but in either case cases of exemption will presumably arise.

Disposal of lands by Trust

3. In order to get the best possible price for lands acquired by them the Trust divides them into suitable building plots. Any one of these plots may be formed by the amalgamation of a number of different holdings acquired from different owners. The Board of Trustees for the Improvement of Calcutta have decided that lands which are amalgamated with other holdings in this manner come within the expression "required for the execution of the scheme" in section 78. In such a case therefore no right of exemption arises.

What lands may be exempted.

4. It is only land that is not required for the execution of a scheme that can be exempted. Lands which are needed for new roads cannot therefore be exempted. And as in the case mentioned above where it is necessary to amalgamate holdings with each other in order to form new building sites the Board will refuse to exempt such holdings. But in many such cases the Board will arrange for the owner of the predominant interest in the new holding so formed to acquire the whole. If he is willing to purchase the additional land this in effect exempts his land from acquisition. Also in cases where only a small portion of a holding is required the Board will exempt the remainder.

5. There are therefore three classes of cases :—

(1) Where the entire holding is exempted.

Here if the owner pays the fee fixed in cash he need incur no additional expense. If he allows the fee to remain outstanding either for three years or as a permanent charge on the land he will have to pay all charges incurred in satisfying the Board that the security is sufficient. Such cases do not come before the Collector at all.

(2) Where a portion of a holding is acquired and the balance is exempted.

In such cases the Board if asked to do so will fix a fee for the portion exempted leaving the Collector to acquire the balance under Act I of 1894. If however the parties are prepared to settle the value of the land which is to be acquired by the Collector with the Board the exemption fee will be considerably reduced as the Board will be able to estimate the exact financial result of the whole transaction and will not incur the risk and cost of proceedings before the Collector and the Tribunal. This is also obviously to the advantage of the party and in my experience such cases are usually settled on these lines. Where such a settlement is made the Board prefers to set off the exemption fee against the value of the land acquired but if the owners desire they are entitled to take payment from the Collector on account of the land acquired and to leave the exemption fee outstanding under section 78 (4), (*i*) or (*ii*).

(3) Where the Board require the owner to purchase excess land.

In such cases exemption cannot be claimed as a right as the land is needed for the execution of the scheme. Here therefore the owner has no option but to accept the settlement proposed by the Board. In these cases the price of the land acquired is set off against the price of the land bought from the Board and the exemption fee. Any balance on account of the exemption fee is allowed to remain outstanding on payment of interest at 4 per cent. and any balance on account of the purchase money at 5 per cent., as a charge on the amalgamated holding. The Board will fix in such cases the date for the first payment of interest.

6. *The latter two classes of cases will come before the Collector in the usual way and he will either acquire under Act I of 1894 the land which is to be acquired or where the parties have settled the whole matter with the Board will frame an award under sections 11 and 31 (4) of that Act giving effect to the settlement. Where an exemption agreement is executed by the owner he must pay all expenses incurred in satisfying the Board that the security is sufficient. But the Board will bear all legal expenses incurred in drawing up the agreement and also the stamp duty and the cost of registration. Cases where tanks have to be filled will be a matter of special arrangement with the Board.

Calculation of exemption fee.

7. In all these cases the exemption fee is fixed upon a consideration of—

(*a*) the present value of the land, and

(*b*) the increased value that it may be expected to command after the improvements undertaken by the Board are carried out. A certain percentage is usually deducted as a margin of security in favour of the owner.

8. Any person having an interest in the land can apply for exemption but the Board are not bound to grant it unless—

(*a*) the land is not required for the execution of the scheme, and

(*b*) the application reaches them before the date fixed by the Collector for filing claims under Act I of 1894, and

(*c*) all persons having greater interests in the land than a lease having seven years to run are joined in it.

If these conditions exist the Board upon receipt of the application are bound to admit it and must then fix a fee. If they do not exist the Board are not bound to admit it.

Practice of the Trust in dealing with applications under section 78

9. As noted above a recent decision of the High Court holds that the acquisition of surplus lands is not within the powers of the Board of Trustees. If this decision stands the procedure which has hitherto been followed will become unnecessary except in a very few cases. All applications for exemption should be forwarded to the Chairman of the Improvement Trust. These applications when received are made over to the Valuation Department of the Trust which reports on them to the Land Committee. The Land Committee then decides either to admit or to reject the application. If it

is admitted the Chief Valuer is then asked to suggest an exemption fee. Before submitting his report as to this the officer of the Trust who is concerned with the case sees the parties and after giving them a full hearing and considering the particular circumstances of each case and endeavouring to arrive at a mutual settlement he submits his report to the Chairman who places it before the Land Committee. The Committee after hearing the persons interested fixes the fee. If the owner accepts the terms the Land Acquisition Collector is then asked to acquire any land that is to be acquired. If the owner does not accept the terms the Land Acquisition Collector is asked to acquire the entire holding.

Postponement of acquisition proceedings.

10. In such cases the mere fact that an application for exemption has been filed is no reason for applying to the Collector for a postponement of the acquisition proceedings. It is only when the Board inform the Collector that an application has been admitted by them that the Collector's proceedings must be postponed for three months. In many cases the Collector will have issued notices under sections 9 and 10, Act I of 1894. When an application for exemption is filed he will receive and record the claims filed, but will take no further steps until the Board have settled the question of exemption. In such cases parties should file their claims by the date fixed as otherwise the negotiations for exemption may not succeed and if no claim has been filed their right of reference may be barred under section 25 (2), Act I of 1894. Personally I always reject applications for postponement on this ground. When once an exemption fee has been paid or an exemption agreement has been executed the acquisition proceedings are abandoned, but if the land is subsequently required by the Board it can be acquired under a fresh declaration published under section 6, Act I of 1894.

Exemption without fee.

11. Where acquisition proceedings are abandoned without payment of any fee or execution of any agreement under section 78, Act V of 1911, the abandonment is really under section 48 (1) Act I of 1894 and Government in such cases at the request of the Trust withdraws from the acquisition of the land. Such cases will arise where the Board consider that the acquisition of a particular holding is unnecessary or unduly expensive or that no exemption fee should be charged.

Right of pre-emption, section 81, Act V of 1911

12. A person whose land has been acquired by the Improvement Trust has a prior right to take on lease or to purchase such land if the Board propose to dispose of it and also consider that this can be allowed. Section 81 provides for this. The wording of the section is vague, but the Board acting on legal advice have held that this right only applies where the land offered for sale or lease, was originally a separate holding or part of a separate holding, and that where several plots are amalgamated to form one building site no right of pre-emption arises. Such a decision would apparently come within their discretionary powers under the section. Where several persons claim this right clause (3) of the section provides for a limited auction among them.

APPENDIX II.

The Court of the Special Tribunal in Calcutta is constituted under section 70, Pengal Act V of 1911. Appeals from its decisions are governed by Act No. XVIII of 1911. The following statements will show the nature of the evidence relied on by the Tribunal and the methods of valuation which it has adopted. An analysis of the more important rulings on questions of law or valuation is also given dealing with the following subjects :—

1. Area.
2. Burden of proof.
3. Costs.
4. Damages.
5. Rulings as to evidence—

   (*a*) Awards of Tribunal.
   (*b*) Awards of Collector.
   (*c*) Offers of settlement made by Collector.
   (*d*) Statement or admission by Trust or Trust Officer.
   (*e*) Sales.
   (*f*) Sales after the declaration.
   (*g*) Evidence of experts.
   (*h*) Offers.

6. Limitation.
7. Common Passages.
8. Rental Valuation—

   (*a*) Years' Purchase.
   (*b*) Fair Rent.
   (*c*) Pasti rents.
   (*d*) Deductions from the rent.
   (*e*) Salami.

9. Sales.
10. Statutory allowance of 15 per cent.
11. Severance.
12. Structures—

    (*a*) Depreciation.
    (*b*) Huts.

13. Valuation—

    (*a*) Valuation by belts.
    (*b*) Tanks.
    (*c*) Set back by Corporation.

The following is an analysis of the more important decisions of the Tribunal in cases coming before them up to February 1916. The statement shows the nature of the evidence relied on, the method of valuation adopted and the result in each case :—

Number of case.	Evidence relied on.	Method of valuation.	Result.
A.—Common Passages.			
36 of 1914 ...	Collector's awards ...	Land ...	Confirmed.
47 ,, ...	Ditto ...	Ditto ...	Ditto.
102 of 1915 ..	Ditto ...	Ditto ...	Ditto.
B.—Vacant Land.			
49 of 1914 ...	Collector's awards ; sales	Land ...	Increased.
69 of 1915 ...	Sales	Ditto ...	Ditto.
75 ,, ...	Collector's awards ...	Ditto ...	Ditto.
C.—Basti.			
4 of 1914 ...	Admitted Rent ...	Rental ...	Ditto.
37 ,, ...	Offers ; sales ...	Land and Buildings.	Ditto.
60 ,, ...	Collector's awards ...	Ditto ...	Ditto.
61 ,, ...	Admitted Rent ...	Rental ...	Ditto.
82 ,, ...	Collector's awards ; rents	Both methods	Ditto.
83 ,, ...	Collector's awards ...	Land and Buildings.	Ditto.
95 ,, ...	Ditto ...	Both methods	Ditto.
114 ,, ...	Collector's awards ; sales	Ditto ...	Ditto.
130 ,, ...	Ditto	Land and Buildings.	Ditto.
16 of 1915 ...	Admitted Rent ...	Rental ...	Ditto.
43 ,, ...	Collector's awards ; sales	Land and Buildings.	Ditto.
58 ,, ...	Collector's awards ...	Both methods	Ditto.
65 ,, ...	Ditto ...	Ditto ...	Ditto.
D.—Pucca Buildings.			
5 of 1914 ...	Admitted Rent ...	Rental ...	Ditto.
6 ,, ...	Collector's awards ; rent	Ditto ...	Ditto.
12 ,, ...	Rent ; Collector's awards ; sales.	Both methods	Ditto.
19 ,, ...	Collector's awards ...	Land and Buildings.	Ditto
27 ,, ...	Rent ; Collector's awards	Both methods	Ditto.

Number of case.	Evidence relied on.	Method of valuation.	Result.
D.—Pucca Buildings—concluded.			
30 of 1914 ...	Collector's awards ...	Rental ...	Increased
44 ,, ...	Ditto ...	Both methods	Ditto.
65 ,, ...	Rent	Rental ...	Ditto.
73 ,, ..	Collector's awards ; rent ...	Both methods	Ditto.
93 ,, ...	Sales ; expert evidence as to rent.	Rental ...	Ditto.
107 ,, ...	Rent	Both methods	Confirmed.
123 ,, ..	Ditto.	Rental ...	Increased.
17 of 1915 ...	Collector's awards ...	Both methods	Ditto.
48 ,, ...	Ditto ...	Land and Buildings.	Ditto.
56 ,, ...	Ditto ...	Both methods	Ditto.
78 ,, ...	Ditto ...	Ditto ...	Ditto.
82 ,, ...	Ditto ...	Ditto ...	Ditto.
109 ,, ...	Rent ...	Rental ...	Ditto.

The following statement gives the figures for all cases where the Tribunal has valued upon the rental method :—

Case No.	Actual rent.		Assumed rent.		Deductions	Years' purchase.
	Rs.	A.	Rs.	A.		
49 of 1914, pucca	255	0	360	0	30(2)*	16⅔
12 ,, ,,	270	0	350	0	20(1)*	18
107 ,, ,,	40	0	40	0	20(1)	16⅔
65 ,, ,,	205	0	205	0	25(1)	18
73 ,, ,,	100	0	70	0	20(1)	18
basti	25	0	25	0	10	20 ground rent.
6 etc., of 1914, pucca	180	0	180	0	20(1)	19
basti	34	8	34	8	25(2)	25 ground rent.
60 ,, ,,	69	12	69	12	20(1)	25 Ditto.
pucca	33	0	33	0	10	16⅔
stable	12	8	12	8	20(1)	14⅔
4 ,, basti	45	0	45	0	10	14⅔
44 ,, pucca	133	0	133	0	20(1)	19
30 ,, ,,	180	0	250	0	20(1)	16⅔
	...		...		...	14⅔

* (2) = 60th share of the taxes paid by the owner.
(1) = One share of the taxes paid by the owner.

Case No.	Actual rent.	Assumed rent.	Deductions.	Years' purchase.
	Rs. A.	Rs. A.		
114 of 1914, basti	288 0	288 0	40(2)	20 (ground rent).
123 „ pucca	80 0	80 0	33(2)	14⅔
93 „ „	...	32 0	20(1)	18
16 of 1915, basti	33 0	33 0	20(1)	12½
127 „ pucca	41 0	40 0	20(1)	18
10 „ dispensary.	65 0	65 0	15(1)	16⅓
„ wine shop	130 0	130 0	25(1)	14⅔
17 of 1915, pucca	50 0	45 0	25(1)	18
56 „ „	90 0	95 0	20(1)	18
95 of 1914, basti	270 0	270 0	30(2)	12
48 of 1915, pucca	65 0	65 0	25(1)	16⅔
82 „ „	96 14	180 0	...	...
Residential ...	...	...	20(1)	18
Shops ...	...	...	30(2)	14⅔

Several points may be noted here. Firstly it is clear that except in exceptional cases the Tribunal are inclined to regard the actual rent collected as the fair rent. If an owner alleges that his rent is low the onus will be on him to prove this. Secondly the Tribunal almost invariably take the deductions on account of one share of the taxes as equalling 10 per cent. and the deduction on account of repairs, vacancies, etc., at 10 per cent. Thirdly, although the Tribunal have repeatedly declared that their standard for ordinary residential property in Calcutta is twenty years' purchase they have not as yet in any single cases awarded twenty years' purchase of a fair rent except in valuing a ground rent. This fact, I think, goes far to show that my estimate that the years' purchase should vary between 16⅔ and 20, the latter figure being regarded as a maximum, is correct. The years' purchase awarded by the Tribunal in the case of pucca structures in these cases is 16⅔, 18, 16⅔, 18, 18, 19, 16⅔, 19, 16⅔, 14⅔, 14⅔, 18, 18, 18, 18, 16⅔, 18. Or on an average 17·265 or 17¼ years' purchase over the whole series of decisions.

RULINGS.

Area

1. *Case No. 129 of 1915.*—Where the Collector's area was disputed and no evidence was adduced before the Tribunal the award was not disturbed.

Apportionment.

Case No. 67 of 1914.—The Tribunal has no power to direct a party to whom the Collector has paid money to refund it. It cannot therefore decide a reference for apportionment in cases where the Collector has paid.

2. *Case No. 98 of 1914.*—The provisions of clause (2) or (3) of section 24A, Act I of 1894, as amended by Act V of 1911, cannot be applied by the Tribunal unless it is satisfied independently of any opinion expressed by the Collector that the building was in the condition contemplated by these clauses. It follows that in every case the burden of proof will be on the party alleging this. Burden of proof.

In this case the Tribunal found that the house was unfit for habitation before the date of the declaration and therefore valued it as old materials.

Case Nos. 58 and 65 of 1915.—The burden of proof is on the claimants. They cannot have the award of the Collector enhanced unless they prove that the market value of the property is higher than the amount awarded by the Collector. But it is not necessary for them to establish that the Collectors' award is wrong before asking the Tribunal to determine the value of the property on the evidence and in every case where the owner takes objection to the amount of compensation awarded by the Collector it is the duty of the Tribunal to determine the proper amount of compensation judicially, that is on the evidence adduced before them. In doing so due weight will be given to the Collector's award according to the circumstances of each case.

Case No. 114 of 1914.—In this case it was argued that as the Collector had given no reasons for the rate at which he took the deductions and years' purchase the rule as to the onus of proof being on the claimant did not apply. The Tribunal did not accept this view, holding that if no evidence was adduced the claimants must fail and that the burden of proof was on them. The President remarked however that the Tribunal could not attach to the Collector's award that weight to which it would otherwise be entitled unless reasons were given.

Case No. 82 of 1915.—Where the Collector valued a house which was admittedly a rented house by the rental method it was argued that the claimant had discharged the burden of proof by giving evidence of the value of the land and the cost of construction of the building minus the depreciation. The Tribunal held that having regard to the fact that the property was situated in a locality which was described as partly business and partly residential and to the fact that for the last 40 years it was used for the purpose of letting it out to tenants the inference was obvious that the return which the property was yielding or could fairly be expected to yield in the immediate future would have been the most important matter which an intending purchaser would have taken into consideration in fixing the price to be paid for it. The burden of proof was not therefore discharged by the claimants proving merely the value of the land and the depreciated cost of construction of the building. It is undeniable that the cost of reproducing a piece of property does not always represesnt its value. The depreciated cost of construction of the building would not necessarily represent its value.

Case No. 48 of 1915.—The same view was also expressed in this case.

Costs.

3. *Case No. 51 of 1915.*—In this case the Tribunal refused to interfere with the Collector's award in respect of costs.

Case No. 5 of 1914.—The Trust is not a party and is not entitled to costs.

Damage.

4. *Case No. 25 of 1914.*—In this case the tenant, a hide merchant, claimed Rs. 20,000 under section 23 (4) for loss of earnings. The Tribunal found that he was a monthly tenant and that as such he would be a person interested in the land and therefore entitled to claim damages under this clause. But to maintain a claim under it he must show what damages he had suffered at the time of the Collector's taking possession. As a monthly tenant he might have been ejected without payment of compensation at the end of any month after fifteen days' notice. As he had been allowed to remain in possession for fifteen days after the Collector gave him notice the Tribunal held that no damage was proved and dismissed the reference.

Case No. 67 of 1914.—A monthly tenant ejected by the Collector after 15 days' notice is not entitled to compensation. On the other hand in a similar case the Tribunal held that a monthly tenant even though he had received notice from the Collector was entitled to compensation as until the Collector took possession of the land his notice could not be held to be a notice under the Transfer of Property Act. Case No. 59 of 1914. (The cases can be distinguished as in the former the tenant had been allowed by the Collector to remain in possession after the taking of possession by the Collector.)

Rulings as to evidence. Awards.

5. *Case No. 73 of 1914.*—The Tribunal is bound by the Evidence Act and must therefore proceed according to the strict rules of evidence. It follows from this decision that its own awards in respect of one piece of land are not relevant and cannot be referred to in deciding the value of a piece of land immediately adjoining. The result seems peculiar.

Case No. 37 of 1914.—In this case an award of the Tribunal was admitted as evidence, but only to show the method by which the Court had arrived at its decision and the decision on a point of law raised in both cases. Awards made by the Collector and accepted by the parties are relevant and may be considered as of the nature of a voluntary sale. But statement made by the Collector even such statements as are made in his "reasons for award" cannot be used in favour of Government. In the same case however a statement made by the Collector in the reasons for award in another case was used by the Tribunal to disprove his valuation in the case before them.

Case No. 43 of 1915.—An award of the Tribunal in respect of a property is irrelevant on the question of the market value of another property in a case between different parties. Nor can it be made relevant under section 11 of the Evidence Act.

Case No. 36 of 1915.—An award of the Tribunal is nothing more than a judicial determination of the matter referred to it on the evidence adduced in the case and ought not to be

used as evidence in another case. The amount of the compensation fixed for the property by an award of the Tribunal is not necessarily the market value of the property.

Award by Collector.

(*b*) *Case No. 95 of 1914.*—An accepted award is evidence of market value. If the owner voluntarily accepts what is awarded by the Collector as the market value of the property that in the absence of anything to the contrary would make the award evidence of the market value of the property in much the same way as if the price had been settled by bargaining between a willing vendor and purchaser.

Case No. 130 of 1914.—Held that awards made by the Collector and accepted by the parties interested are admissible to the same extent as voluntary transfers as evidence of the market value of the properties acquired at the date of the declaration.

Case No. 82 of 1915.—An award in the case of a small property for which a high value was awarded on account of the specially high rent which it yielded cannot be regarded as a fair guide to the value of land in the neighbourhood.

Case No. 95 of 1914.—Government is not bound by each item of the Collector's award shewing how his total valuation is arrived at but by the total. Government is therefore entitled to show that the deductions in a valuation by the rental method should be greater than those taken by the Collector.

Offers of settlement made by the Collector.

Case No. 43 of 1915.—Where the Collector was stated to have offered to pay an amount in excess of the amount finally awarded and the offer, if any, was made by the Collector with a view to come to a compromise and avoid further litigation any statement made by the Collector in such circumstances should be regarded as one made without prejudice. As the agent of Government making the acquisition the Collector is at liberty to treat with the parties and there is nothing in the Act to say that it is not open to him to settle with them. In any case where the Collector makes a statement on the implied understanding that evidence of it is not to be given, section 23 of the Indian Evidence Act makes the statement inadmissible in evidence.

Statement by Trust.

Case No. 43 of 1915.—The Trust is not a party in a reference and a statement by an officer of the Trust is not admissible as an admission.

Sales.

Case No. 43 of 1915.—Sales of land containing pucca buildings are not relevant in valuing basti lands. Section 23 (*3*) (*a*) of Act I of 1894 as amended by Act V of 1911 is the same as section 557 (*c*) of Act III of 1899. On the authority of the ruling in Harish Chandra Neogi *v.* Secretary of State, I. L. R., 41 Calc., 967, the Tribunal held that a sale of land containing pucca buildings was not admissible where the point at issue was the valuation of basti land. This ruling has been followed by the Tribunal in several cases.

Case No. 82 of 1914.—Held on the authority of the same ruling in Harish Chandra Neogi *v.* Sectretary of State, I. L. R., Calcutta 41, page 967, that evidence of sales and rentals of land combined with pucca structures was inadmissible in a case regarding the valuation of basti lands.

Case No. 36 of 1915.—The only section of the Evidence Act under which sales of neighbouring lands are relevant on the question as to the value of a particular plot of land is section 11. Under that section the evidence can only be relevant if taken by itself or in connection with other evidence. Where a large area is declared for acquisition by which a number of people would be deprived of their places of residence or of business the value of the land in the neighbourhood outside the declared area must be considerably affected thereby. Held as a matter of law that from a sale of such land in the neighbourhood after the date of the declaration no inference as to the market value of any land within the declared area at that date can be drawn with that degree of probability which section 11 of the Evidence Act requires.

Case No. 75 of 1915.—Evidence of sales of lands situated at a considerable distance (Harish Chandra Mukerjee Road) from the land in question, (Russa Road) and in a locality very different in character are of little value. Where a sale took place when the area proposed to be acquired by the Trust became widely known the effect must have been to raise the value of land in the neighbourhood outside the scheme. The subject matter of the sale was land outside the scheme and the Tribunal therefore refused to accept it as affording any reliable data for ascertaining the value of land within the scheme.

Where the evidence as to a sale was that the vendors were at the time of the sale heavily involved, that there were unsecured debts at high rates of interest and that the vendors had no means of paying off their debts without selling the property the Tribunal placed no reliance on the sale.

Case No. 78 of 1915.—Where the facts of a sale showed that there was some dispute as to the vendor's title and the purchaser had full notice of this it was held that such a sale could not be taken as evidence of the market value.

Sales subsequent to the declaration.

Case No. 69 of 1915.—Objection was taken by Government that sales subsequent to the declaration were not evidence. The Tribunal remarked "It has not been suggested that the declaration of intended acquisition of the premises in question could have in any way affected the market value of land in this neighbourhood and I think that sales subsequent to the declaration are of as much help as sales of prior date in determining the market value of the land on the date of declaration in a case like the present. The evidence was admitted and relied upon.

Evidence of experts

(*g*) *Case Nos. 58 and 65 of 1915.*—Expert opinion is liable to err and it is not safe to place much reliance on this kind of evidence unless it is supported by or coincides with other evidence.

Offers.

(*h*) *Case Nos. 58 and 65 of 1915.*—An offer made without any reasonable expectation that it will be accepted is of no weight. Offers made by brokers on behalf of undisclosed principals are of very little weight. In most of the cases the offers adduced were not supported by good evidence and in any case as the Tribunal remarks in case No. 30 of 1914, these are

merely expressions of opinion and cannot be more. In this case and in cases Nos. 4 and 73 of 1914 evidence as to offers was adduced but the Tribunal disregarded this.

Case No. 109 of 1914.—Oral evidence of an offer was tendered but the witness did not know the name of the person making it and took him to be a broker. As there was no other evidence as to this offer it was not taken into account.

Case No. 17 of 1915.—An offer is merely an expression of opinion on the part of the person making the offer that the property at the time of his offer was worth the amount which he offered. In this case the value of the property as a whole had gone down between the date of his offer and of the declaration.

Limitation.

6. *Case No. 42 of 1915.*—The six weeks' period of limitation runs from the date of the receipt of the notice from the Collector under section 12 (*2*). To make this period applicable to a case it must be shown (1) that a notice was given by the Collector under section 12 (*2*), and (2) that it was received by the party. The Tribunal held that it is not enough to show that the notice was duly served for having regard to the provisions of section 45 of the Act a notice may be duly served although it may never have been received by the addressee. The legislature must be presumed to have known the distinction between service of notice and receipt of notice and when they used the word receipt they must be presumed to have used it in its ordinary signification. Receipt by an agent duly authorised in that behalf would of course have the same effect as receipt by a principal. Notice under section 12 (*2*) can be given only after an award has been made under section 11 of the Land Acquisition Act and under that section as amended by the Calcutta Improvement Act the award must include the costs allowed to the party. Where therefore a notice under section 12 (*2*) had been affixed to the door of the claimant's house and the claimant swore that he had not received it, it was held that there had been no receipt of notice. It was also held that when a supplementary award for costs was made the period of limitation would run from the date of the supplementary award as the award did not become fixed until the award for costs was made.

Case No. 83 of 1914—In this case it was held that as the estate remained without any representative during the pendency of probate proceedings in the High Court and as the time fixed by the Collector for the filing of claim fell during this interval there was a sufficient reason for the omission to file a claim before the Collector within the meaning of section 25 of the Land Acquisition Act.

Case No. 27 of 1915.—In this case the claimants were required by notice to file a claim. In their claim they merely stated that they realised Rs. 125 for this and another property. What the law contemplates is that a claim to be one in pursuance of the notice under section 9 must state definitely the amount of the claim. Held that the reference was barred, section 25, (2).

Case No. 109 of 1914.—In this case where there was a delay of one day in filing the claim, it was held that the fact that the notices upon two executors had been left at the house of one of them who was an illiterate lady was sufficient reason for the delay.

Passages.

7. *Case Nos. 36 and 47 of 1914.*—Rights over passages are included in the awards in respect of the properties possessing such passages as it cannot be supposed that the Collector should have valued these as properties deprived of access even though the award does not specifically include such rights. Where passages are valued separately it may be noted that the Tribunal has finally accepted the principle that such lands should be valued at ¼ the rate for the adjoining lands.

Case No 102 of 1915.—Where a common passage belonging jointly to the claimants had been valued by the Collector at one-fourth of the rate for the surrounding lands the Tribunal confirmed the Collector's award.

Rental valuation. Years' purchase.

8. *Case No. 109 of 1914.*—Where a property had been rented for the last 12 years *primâ facie* the rental method of valuation would seem to be the more appropriate to adopt. Taking 20 to be the number of years' purchase ordinarily applicable to property of this class and having regard to the fact that the house was built partly in mud mortar and was kept more or less in a neglected condition 18 years' purchase was allowed.

Case No. 12 of 1914.—There is no fixed principle of law that properties must be valued at 20 years' purchase. But 20 years' purchase is adopted as a standard for such valuation in Calcutta. (As a matter of fact however the Tribunal practically never awards 20 years' purchase).

Case No. 93 of 1914.—In this case the majority of houses in the locality were residential houses occupied by middle class Bengali gentlemen and it was held that from the point of view of security the locality was good. The position of a house affects not only the rent but also the years' purchase. It depends on the security and the market. Other things being equal a house in a good position would not only command more rent than a house less favourably situated, but there would be in the case of the former a greater certainty of its constantly remaining let at that rent. Also there would be a greater demand for houses in good position. The position of a house therefore affects both the security and the market and consequently the years' purchase. For ordinary small dwelling houses in this locality the rule of 20 years was accepted as the standard, but in this case as the house was not well situated 18 years' was awarded.

Case No. 123 of 1914.—The land and building method not applicable, firstly, because the high rent which the property was yielding showed that the structure on the land developed the value of the property to a considerable extent, and it is a self-evident proposition that in all such cases the market value of the property must be considerably more than the sum of the cleared site value of the land and the depreciated cost of construction of the structures; and, secondly, because there were

no sufficient materials. (It may be remarked with reference to the first reason that it is an equally self-evident proposition that unsuitable buildings will depreciate the value of land and that for this reason the land and buildings method of valuation is radically unsound as it takes no account of the suitability of the buildings).

Case No. 95 of 1914.—Adaptability to different modes of user makes a property a higher class of security than property which does not possess such adaptibility. Twenty which is the number of years' purchase for good residential houses in Calcutta is too high a number to be allowed in the case of land and huts. In this case the rent was capitalised at 8½ per cent. which represents 12½ years' purchase.

Fair rent.

Case No. 17 of 1915.—House let to prostitutes. Rent obtained by letting a house to prostitutes must be disregarded in view of the provisions of section 23 (*3*) (*d*) of Act I of 1894 as amended by Act V of 1911. A deduction of 10 per cent. from the rent actually realised was made for this reason.

Salami

Case No. 10 of 1915.—Ordinarily no one would let out a building to be used as a wine-shop unless he got a higher rent than that which it would have fetched if it had been let out for ordinary shop purposes.

Huts with land.

Case No. 114 of 1914.—Forty per cent. is a fair gross return to be expected from capital invested in huts. In this case the Tribunal deducted 40 per cent. from the gross annual rental and took the balance as the rental for the land. This was capitalised with 30 per cent. deductions at 25 years' purchase and the estimated value of the huts was then added to arrive at the total valuation. (So far as I know the same method has not again been used. It is clearly very cumbrous).

Deductions from the rent.

The Tribunal has almost invariably adopted the system followed by the Calcutta Corporation in estimating the deductions from the rent. One share of the taxes is represented by 10 per cent., and repairs, vacancies, bad debts and collection charges by 10 per cent. If the municipal assessment is low and the tax payable results from an underassessment however the Tribunal will not proceed on the assumption that the underassessment will continue but will deduct the usual percentage, cases Nos. 6, 19, 27 and 60 of 1914.

Case No. 114 of 1914.—The deductions on account of taxes should be the prescribed percentage and not the actual amount paid, as a purchaser taking a property on the basis of a certain rental will certainly proceed on the basis of the tax being payable on the basis of that rental.

Case No. 114 of 1914.—The evidence only showed one instance of receipt of salami. No allowance made for it.

Unrented land.

Case No. 114 of 1914.—The existence of the open space in this premises was on the evidence held to be necessary to make the rest of the property yield the return which was actually received and in that sense it was taken into account in the valuation.

Sales.

9. These are freely used where evidence of them is given. In case No. 44 of 1914 the Tribunal made use of both the

rental and the land and buildings method of valuation because in their own words there is no sure guide to the number of 'years' purchase that should be allowed. In this case where an engineer valued the structures at Rs. 12,938 and the Collector at Rs. 12,000 the mean was taken. The land was valued according to the two-thirds rule and in arriving at their conclusion the Tribunal made free use of the Collector's awards in other cases and also used statements made by him in the reasons for his awards as admissions made by Government. The building in this case was estimated to be 33 years old and the depreciation taken was 27 per cent.

In a large series of decisions following on these cases the Tribunal adopted the rental valuation and checked it by the calculations arrived at from the statements of experts and inferences drawn from reasons given by the Collector in other cases or even from bare awards made by the Collector. Most of these decisions rest on inferences drawn from awards made by the Collector, inferences as to the cleared value of the land being drawn by deducting the assumed cost of the buildings less depreciation from the total amount awarded in order to arrive at the value of the land. Similar inferences were drawn from sales of lands and buildings. The decisions in cases Nos. 37 and 49 of 1914 proceed entirely upon sales and in the former case a sale actually concluded after the declaration was admitted as evidence on the ground that the arrangements for it had been completed before the declaration.

Stautary allowance.

10. *Case No. 78 of 1915.*—The claimant claimed the allowance of 15 per cent. on the ground that the property was not required for the purpose of the street and proposed to show this by referring to certain resolutions of the Board of Trustees. Further it was argued that the Board had therefore no authority under the law to include this land and that Government had no authority to sanction the scheme if it included the land. The Tribunal ruled that the resolutions of the Board of Trustees were irrelevant. Further that the notification under section 49(*1*) of Act V of 1911 was conclusive evidence that the scheme was duly framed and sanctioned and that consequently they statutory allowance of 15 per cent. could not be claimed in respect of the property. This ruling conflicts with the more recent decision of the High Court in the case of Chandra Kanto Ghosh *versus* The Board of Trustees for the Improvement of Calcutta in which it was held that the Trust had no power to acquire surplus lands.

Severance.

11. *Case No. 78 of 1915.*—Where a claim for severance was put forward and no materials were put before the Tribunal to enable them to assess the compensation under this head no allowance for it was made.

Structures.

12. In valuing structures the Tribunal almost invariably proceeds on the evidence of experts and generally accepts a mean between two valuations. This is not a very satisfactory method as the natural tendency will be for the one side to undervalue and the other to overvalue, and if conclusions

as to land values are to be based on inferences drawn from such materials the result is likely to be very wrong.

Case No. 93 of 1914.—Taking the building as a second class building under the Public Works Department standard the depreciation was calculated at the rate of 5 per cent. for every six years. Depreciation.

Case No. 48 of 1914.—A comparison of the valuation by the rental method with the valuation of the land alone showed that there was no value left in the building which was very old and in a bad state of repair and that it was ripe for demolition. The value of the building was therefore the value of the materials less the cost of removal.

Case No. 73 of 1914.—The amount spent on building a hut cannot be evidence of its value eight years later. (There seems to be no reason why the same principle should not apply in the case of pucca structures). Huts.

Case No. 43 of 1915.—The average life of an ordinary hut was taken at 25 years and for a hut that was about 6 years old the depreciation was taken at 25 per cent. The Collector's award was confirmed.

13. *Case No 130 of 1914.*—Section 23(*3*) (*a*) of Act I of 1894 as amended by Act V of 1911 The object of the enactment of this section is to exclude in cases to which the section applies the principle of valuation applied in all ordinary acquisition of estimating the market value of a property not according to its present disposition but laid out in the most lucrative and advantageous way in which the owners could dispose of it. The section requires that the Court should throw the property as it is into the market and see what price it will fetch. Valuation.

Case No. 69 of 1915.—In valuing large properties consisting of land and buildings on the land and buildings method it often becomes necessary to divide the land into two or more belts for the purpose of valuation and the dividing lines may have to be drawn through the structures. There is nothing in the law which prevents this being done. (Obviously there is nothing in the law to prevent this as the law lays down no principles of valuation. At the same time this practice is obviously opposed to the spirit of the law which requires that the property should be valued as it exists at the date of the declaration. Also it falls into the error of valuing the land as a cleared building site and then adding the cost of the structures—an error which the Tribunal have themselves pointed out in case No. 82 of 1915.) Valuation by belts.

Case No. 51 of 1915.—The rule of valuing back land at two-thirds of the rate allowed for the front land cannot be applied where a comparatively narrow belt of front land is valued at a specially high rate owing to its being suitable for shops. In this case one-half was taken. In localities where the suitability of the land for shop purposes is the principal element of value corner plots command high prices and it would be manifestly wrong to base the value of neighbouring land on those prices.

Case No. 83 of 1914.—In this case land was valued by belts. The first was taken as the shop belt to a depth of 35 feet. The land behind was divided into two belts. The valuation was at the rate of Rs. 2,200, 1,100 and Rs. 750.

Case No. 114 of 1914.—The ordinary rule of taking off a third from the value of the first belt in valuing the second could not be applied in this case as the first belt had a special value by reason of its adaptability for shop purposes.

Case No. 82 of 1915.—The eastern side of the Russa Road which had a foot-path was more suitable for shops than the western which had none.

Tanks

Case No. 17 of 1915.—In this case the Tribunal stated that it accepted the usual practice of valuing tanks at one-half the value of surrounding lands. (As a matter of fact this is not the usual practice and the Tribunal did not actually follow it in this case and has not followed it in others.)

A deep tank is more valuable than a shallow one. (This will of course depend entirely on the value of the surrounding land. If this is high a shallow tank will be more valuable as it will cost less to fill it.)

Case No. 36 of 1915.—A tank was valued at half the rate of surrounding lands.

Set-back by Corporation

Case No. 75 of 1915.—Where the Corporation had set back a premise 30 feet it was argued that the premise should be valued as if it stood on a 60-foot road, the existing road being 30 feet wide. No 60-foot road had however been constructed at the date of the declaration, and the Tribunal having regard to the condition of the strip of land in front refused to accept the contention The actual result of the set-back had been to throw the land into a recess. Also they refused to accept the argument that the Corporation in acquiring the land had not valued and paid for it as frontage.

APPENDIX III.

The following papers will give an idea of the progress of a land acquisition case and the method of valuation followed in this office. They are extracts from actual cases.

(1) Note on the rates of rent paid in Scheme No. VII. This is a recent scheme undertaken for the Improvement Trust in the centre of the town. The plan and the note will show my method of handling rental statistics in valuing such a scheme and the nature of the statistics.

(2) Valuation cards. These are examples of the valuation cards used in the Calcutta Land Acquisition office. These cards are printed on stiff board as already explained. The example is taken from an actual card and will show how the

information is collected and classified. It refers to a case in the same scheme and the subsequent papers refer to the same case.

(3) Order sheet of the same case.

(4) Award in the same case.

(5) Reference to the Court in the same case.

(6) Rent statistics.

(7) Index card of the same case.

In addition examples of the forms of notice other than those prescribed in the Government rules are given. Complete statistics showing the years' purchase awarded in Scheme I which was situated in the centre of Calcutta are also attached. Statements showing the rate at which damages were awarded, a table giving the present capitalised value of an unexpired lease, a table of multiplying factors for ascertaining the capital value of a rent of Re. 1 a month at any given number of years' purchase with a given percentage on account of deductions, and tables for calculating the value of land at any given rate per cottah.

(1) NOTE ON RENTS PAID IN SCHEME VIIA.

1. The accompanying plan shows the Scheme. The figures shown on each premise are the rates of rent per 100 square feet paid for shops and for other purposes, the rents paid for shops being underlined.

2. The following statistics have been collected for every premise :—

(*a*) The actual floor space occupied by each tenant and the net rent, after deduction of taxes, paid to the landlord.

(*b*) The rent so obtained for the area is then calculated out per 100 square feet of floor space.

(*c*) In pucca buildings the floor space shown is the floor space of the living rooms only, cook-rooms, store-rooms and privies being excluded.

(*d*) In huts the total plinth area is taken as the floor space.

3. The scheme for the purposes of comparison is divided into four blocks as follows :—

(1) Frontages on Halliday Street.

(2) Back lands of the above frontages.

(3) Corner of Harrison Road.

(4) Frontages on Machua Bazar Street and Halliday Street beyond Harrison Road.

4. The actual figures in regard to this scheme were as follows :—

Block No. 1.

Pucca Shops.—2,139 square feet rented for Rs. 251-8 giving a rate of Rs. 11·8 a 100 square feet.

Basti Shops.—4,497 square feet rented for Rs. 319 giving a rate of Rs. 7·1 a 100 square feet.

Pucca Interior.—10,990 square feet rented for Rs. 1,014-8 giving a rate of Rs. 9·2 a 100 square feet.

Basti interior.—8,435 square feet rented for Rs. 302 giving a rate of Rs. 3·6 a 100 square feet.

Block No 2.

Pucca interior.—13,501 square feet rented for Rs. 724-8 giving a rate of Rs. 5·4 a 100 square feet.

Basti interior.—3,150 square feet rented for Rs. 102-10 giving a rate of Rs. 3·3 a 100 square feet.

Block No 3.

Pucca shops.—1,072 square feet rented for Rs. 128-8 giving a rate of Rs. 12 a 100 square feet.

Basti shops.—1,749 square feet rented for Rs. 274 giving a rate of Rs. 15·7 a 100 square feet.

Pucca interior.—923 square feet rented for Rs. 85 giving a rate of Rs. 9·2 a 100 square feet.

Basti interior—7,125 square feet rented for Rs. 241 giving a rate of Rs. 3·4 a 100 square feet.

Block No 4.

Pucca shops.—1,885 square feet rented for Rs. 144 giving a rate of Rs. 7·6 a 100 square feet.

Basti shops.—11,011 square feet rented for Rs. 1,110-8 giving a rate of Rs. 10·1 a 100 square feet.

Pucca interior.—874 square feet rented for Rs. 72 giving a rate of Rs. 8·2 a 100 square feet.

Basti interior.—44,344 square feet rented for Rs. 1,441-12 giving a rate of Rs. 3·3 a 100 square feet.

The inferences that can be drawn from figures of this nature are obvious, but I only give them here as an example of the manner in which my statistics are collected and tabulated for the purposes of valuation.

(2) VALUATION CARD (FRONT).

CASE NO.

Premise No. *Holding No.*

Registered Proprietor. Municipal Valuation.

A. B —

Persons interested	Area occupied.	AWARD.		
		Damages.	Fixtures.	Costs.
Landlord.				
1. A. B., son of , etc.,	...	...	...	...
Tenants.				
2. E. F., son of , etc., holds under a lease for ten years.	...	...	...	...
Total ...	...	...	...	...

VALUATION CARD (BACK).

Number of living rooms, 11. *Total floor space 1,443.*

Persons interested.	Area of buildings.	Rate.	Amount.	Award if separately owned.
		As.	Rs.	
2 E. F. ...	Tiled hut 1,443	5	451	...
Land.	k. ch. sq. ft.			
Survey area ...	2 1 5	...	...	...
Surveyors' area.	2 2 0	...	...	...

Sale if any, Nil.
Ground rent, Rs. 10 a month.

Rent.	Area let out.	Rent.	Rate.
		Rs.	Rs. A.
Interior ...	Nil	...	...
Shops ...	1,443	112	7 8
Total ...	...	...	...

Taxes. Both shares paid by landlord

Fair rent	Deductions.	Years, purchase.	Valuation.
Rs.			Rs.
112	30 per cent.	14	13,440

Draft award for land and structures, Rs. 13,440.
Notice sent to Trust on 7-3-1916.
Final award, Rs 13,440.

VALUATION CARD.

CASE NO

Shops and Sub tenants

Premise No 1, Halliday Street.

Persons interested.	In occupation for.	Area occupied	Rent	AWARD.		
				Damages.	Fixture.	Costs.
Shops.		Rs.	Rs	Rs	Rs	Rs.
3. G. H., son of , etc., grocer's shop.	5 years	1,443	112	400	135	63
Total ...					Rate 7-8	
Sub-tenants.						
Nil						
Total ...					Rate.	

(3) ORDER SHEET.

(SEE RULE 129 OF THE RECORDS MANUAL, 1911).

Order Sheet, dated from to

District Calcutta.

Nature of the case

Serial number and date of order	Order and signature of officer	Note of action taken on order
1	Surveyor's report received. Issue general notice, section 9, Cl. 1 and 2 to be affixed at the door of the premise and special notices, sections 9 and 10 to the persons named in it fixing the for claims.	
2	Notices duly served. Claim filed on behalf of A B, etc. E. F. has filed no claim. No claim filed on behalf of the registered proprietors.	
3	I will inspect the premise between 7 and 9 A.M. on the instant. Issue notices.	
4	I inspected the premise on Issue notice for award for the	
5	H. L., Pleader, District Judge's Court, appears for A. B. I have heard him. No one else appears. Put up for final award.	
6	Award signed to-day. Issue notice, section 12 (*2*) for . Possession will be taken on .	
7	Rs. 598 paid to G. H. on the identification of H. L., Pleader. Payment taken under protest.	
8	Petition of reference filed by A B on . Refer if in time.	
9	Rs. 13,406-3-0 deposited with the Tribunal, section 31 (*2*). Refer the apportionment dispute, section 30. Rs. 33-13-0 paid to the Corporation on account of tax.	
10	Possession made over to the Trust on .	
11	Reference No. 218 dated regarding both valuation and apportionment forwarded to the Tribunal under sections 18 and 30, Act I of 1894. The Trust is informed.	

(4) AWARD.

CASE NO. VIIA OF 19

Proceedings under Section 11, Act I of 1894.

Name of project.	Scheme No. VIIA.
Number and date of the Declaration under which the land is to be acquired.	Declaration No. dated Published at page Part of the *Calcutta Gazette* of
Situation and extent of the land, in bigkas and acres, the number of field plots on the survey map, the village in which situate, with number of mile plan, if any.	Premise No. Area B. C. CH. Sq. Ft. 0 2 2 0
Description of the land, *i.e.*, whether fallow, cultivated, homestead, etc. If cultivated, how cultivated ?	
Names of persons interested in the land and the nature of their respective interests.	
Amount allowed for the land itself without the trees, buildings, etc., if any.	
Amount allowed out of such sum as compensation for the tenants' interest in the land.	
Basis of calculation ...	Land and structures. Rs. 13,440. Tenants' compensation—

	Rs.
Fixtures	135
Damages	400
Costs	63
	14,038

Amount allowed for trees, houses or any other immoveable things.	
Amount allowed for crops or huts.	
Additional compensation on the market value under section 23 (2).	

Damages under clauses 3, 4 and 6, and expenses incidental to change of residence under clause 5, section 23 (*1*), Act I of 1894.	Total Rs.
Award under section 11, Act I of 1894, with particulars of abatement of Government revenue, or of the capitalized value paid, the date from which the abatement takes effect and the tauzi number of the mahal.	Total Rs. 14,038 (in words) rupees fourteen thousand and thirty eight only. Revenue free holding No.

Award Statement No. , dated to Accountant-General, Bengal.

	NAME OF CLAIMANTS.	Amount payable to each.	REMARKS.
Apportionment of the amount of compensation.	1. A. B, son of etc., owner. 2. E F, son of etc., lessee 3 The Chairman, Calcutta Corporation.	13,440	Rs. 13,406-3 paid by No. 20—1924 to the President of the Tribunal.
	4th quarter of 1915-16 Rs. 16-14-6. 1st quarter of 1916-17 Rs. 16-14-6.		Rs. 33-13 paid by No. 20—1922 to the Corporation.
	4. G H, son of etc., tenant		
	Fixtures	135	Rs. 598 paid by No. 20—1925.
	Damages	400	
	Costs	63	
	Total ...	14,038	(Fourteen thousand and thirty-eight only.)
Date on which possession was taken under section 16 or 17, Act I of 1894, or in any other manner, if under section 17, the number and date of the orders of Government giving authority to do so.	Under section 16 of Act I of 1894 on the		

Collector.

Dated *191*

(5) REFERENCE.

CASE NO. VIIA OF 1916.

Reference to the Court under Section 18, Act I of 1894.

WHEREAS A B, son of etc., , son of has not accepted the award made by me under section 11 of Act I of 1894, a copy of which is hereto annexed and has required by the accompanying application that the matter be referred to the Court, I hereby make the reference to the Court of the President of the Calcutta Improvement Tribunal. The dispute as to apportionment between A.B. and E.F. is also referred under section 30, Act I of 1894.

Name of Project.	Scheme VIII A.
Number and date of the declaration under which the land has been acquired.	Declaration No. A., dated Published at page , Part I, of the *Calcutta Gazette* of the
Situation and extent of the land, the number of field plots on the map, the name of the village, and the number of mile plan if any. Particulars of trees, building or standing crops, if any.	Premise No. B. C. CH. Sq. ft. Area 0 2 2 0
Names and addresses of the persons found to be interested in the land, and nature of each person's interest.	1. A B, etc. 2. E F, etc.
Amount awarded for damages, and paid or tendered under sections 5 and 17.	
Compensation awarded under section 11.	*For land.* *For trees, houses, etc.* *For crops and huts.* Land and structures, Rs. 13, 440.

Grounds on which the amount of compensation was determined.	The gross rent is admitted at Rs. 112. The buildings are old and not in good repair. The security for this rent which is high is therefore bad. The rent represents a rate of Rs. 7·8 a 100 square feet, as compared with an average of Rs. 7·1 for similar shops in this block. The landlord pays both shares of the taxes. Fair rent Rs. 112. Deduction 30 per cent. Years' purchase, 14⅔. Total Rs. 13,440.
Nature of the objection taken to the award.	I also refer under section 30 the dispute regarding the apportionment of the compensation between the owner and the lessee. The owner admits the lease, but claims the full value of the property. I have therefore made a joint award. Copies of the statements of claim filed by the claimants and of the petition of reference are attached. Government has no concern with the dispute regarding apportionment. The compensation is deposited with this reference.

Total Rs.

Total Rs. 13,440 (in words) Thirteen thousand four hundred and forty only.

Dated *191* *Collector.*

SCHEDULE.—Particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested.

Notices.	Statements.
1. General notice, Section 9 (*1*) & (*2*) served on the premise on	Statement of claim filed by A B on.
2. Special notices, Sections 9 & 10 served on.	Petition of reference filed by A B on
3. Notice of inspection served on.	
4. Notice, for award served on	
5. Notice section 12 (*2*) served on.	

(6) RENT STATISTICS.

SCHEME VIIA.

Case No.	Area.	Rent.	Rate.	Class..
—	1,443	112	7·8	Shops.

(7) INDEX CARD.

Case No. VIIA ... Premise No.

B. C. CH. Sq. ft.

No. of Rooms, 11 ... Area 0 2 2 0.
Rent, Rs. 112 ... Floor space. 1,443.
Award land and structures. Damages Costs.
Rs. 14,440 ... Nil. Nil.
Shop.
Floor space 1,443 ... Rent Rs. 112. ... Land rate per cotta.
Award for damages Rs. 400. Fixtures 135 Costs 63

Special Forms introduced for the acquisition under taken for the Calcutta Improvement Trust.

Notice of Local Inspection.

Land Acquisition for the Calcutta Improvement Trust.

PREMISE NO.

The Collector will inspect the premise on the between and . Any person claiming compensation or damages on account of the acquisition of this premise should be present at that time.

CALCUTTA,
Dated *191* *Land Acquisition Collector.*

Notice of draft award.

Memo. No. L. A.

To—The Chief Valuer, Calcutta Improvement Trust.

Case No.	Premises No.	Draft award made by the Collector.	Date fixed for final award

LAND ACQUISITION OFFICE,
Calcutta, *191* *Land Acquisition Collector.*

Land Acquisition for the Calcutta Improvement Trust.

Notice award.

SCHEME NO. PREMISES NO. CASE NO.

Notice is hereby given that in the above case, an award will be made by me on the 191 under section 11, Act I of 1894 The total preliminary valuation of the premise is Rs. Any person claiming compensation should appear before me personally or by a duly authorised agent on that date.

No claims to compensation made after that date will be considered.

CALCUTTA,

Dated *191* *Land Acquisition Collector.*

NOTICE.

Notice of payment given to Landlord.

CASE NO. PREMISE NO.

Name of Landlord

Address

Payment on account of structures and damages will be made to the tenants in this case on the Please attend personally or by agent if you have any claim against the tenants at 10 A.M.

CALCUTTA,

The *191* *Land Acquisition Collector.*

Land Acquisition for the Calcutta Improvement Trust.

Notice for possession

PREMISE NO.

Possession of the premise will be taken by the Collector on the at . All persons are directed to arrange to vacate the premise by that date, unless allowed by the Improvement Trust (5, Clive Street) to remain in occupation.

CALCUTTA,

Dated *191* *Land Acquisition Collector.*

Circular issued to all persons incompetent to alienate whose share in the compensation is deposited on that ground under section 32(2).

LAND ACQUISITION OFFICE,
2, Commercial Buildings,
Calcutta.

CASE NO.

Total compensation deposited under section 31 (2) of Act I of 1894.
Rs.

To

The compensation awarded to you in this case has been deposited in the Court of the Calcutta Improvement Trust Tribunal on the ground that you are incompetent to alienate the property. The Court has, however, power to order the investment of this money in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which compensation has been awarded. If you desire that the money should be invested in this manner, you should fill up the attached form and return it to this office, and the Collector will endeavour to arrange for the purchase of a suitable property after communication with you. No investment will be made without your approval, but as soon as the Collector obtains the offer of any suitable property, he will inform you. You will incur no expense in connection with the enquiries to be made by the Collector.

I desire that the sum of Rs. which has been awarded to me as compensation for my interest in and which has been deposited under section 31 (2) of the Act should be invested in the purchase of land, and I request the Collector to make enquiries and, if possible, to arrange for such investment.

(1) I desire to purchase vacant land and to erect buildings at my own expense (or) land with existing structures.

(2) I desire to occupy the property purchased as a residence.

(3) I desire to realise rent from the property purchased.

(4) I can contribute Rs. towards the proposed investment in addition to the money deposited.

(5) I can contribute no money towards the investment in addition to the money deposited.

(6) I should prefer property situated in any of the following quarters of Calcutta.

(Strike out the clauses not required)

SIGNATURE of the person in whose favour the money has been deposited.

Statement showing the years' purchase awarded in Scheme No. I acquired for the Calcutta Improvement Trust. The figures include the enhanced awards made by the Special Tribunal.

(The deductions are taken at the normal 20 per cent. in calculating the years' purchase.)

—	Net rent per month.		Awards for lands and structures.	Years' purchase.
1	2		3	4
	Rs.	A.	Rs.	
Residential houses ...	1,537	5	2,66,839	18·1
Business houses (including shops).	3,255	5	5,54,860	17·7
Common lodging-houses ...	1,911	5	3,04,920	16·6
Hide godowns ...	1,611	0	2,32,535	15·0

Statement showing the rate per 100 sq. ft. awarded on account of damages under sections 23 (*4*) and (*5*) in various classes of property in Schemes I, IV and VIIA.

Scheme No. I.—Chitpore Road to Halliday Street.
Scheme No. IV.—Russa Road.
Scheme No. VIIA.—Halliday Street and Harrison Road.

—	Area.	Damages awarded	Rate per 100 sq ft
SCHEME No. I—		Rs.	
Residential property ...	33,162	4,230	12·8
Business property ...	60,993	10,505	17·2
SCHEME No. IV—			
Shops	38,000	11,042	20·8
Residential and business property.	45,500	6,690	14·7

(There was very little real residential property in this scheme, separate figures were therefore not kept.)

TABLE No. I.

Table giving the present value of a lease having years to run capitalised at 5 per cent.

Years to run	Years' purchase	Years to run	Years' purchase
100-85	19¾	17	11¼
84 75	19½	16½	11
74-65	19¼	16	10¾
64-59	19	15½-15	10½
58-55	18¾	14½	10¼
54-52	18½	14	10
51-49	18¼	13½	9¾
48½-46	18	13	9½
45½-44	17¾	12½	9¼
43½-42	17½	12	8¾
41½-40	17¼	11½	8½
39½-38½	17	11	8¼
38-36½	16¾	10½	8
36-35½	16½	10	7¾
35-34	16¼	9½	7½
33½-32½	16	9	7
32-31½	15¾	8½	6¾
31-30	15½	8	6½
30-29	15¼	7½	6¼
28½-28	15	7	5¾
27½-27	14¾	6½	5½
26½-26	14½	6	5
25½	14¼	5½	4¾
25-24½	14	5	4¼
24-23½	13¾	4½	4
23	13½	4	3½
22½-22	13¼	3½	3¼
21½	13	3	2¾
21-20½	12¾	2½	2¼
20-19½	12¼	2	1¾
19-18½	12	1½	1½
18	11¾	1	1
17½	11½		

TABLE No. II.

Table showing the net annual rent returned by a gross rent of Re. 1 to Rs. 10 a month at given rates of deductions from nil to 50 per cent.

Rs.	Nil.	5 per cent.	10 per cent.	15 per cent.	20 per cent	25 per cent.	30 per cent.	35 per cent.	40 per cent.	45 per cent.	50 per cent.
1	12	11·4	10·8	10 2	9·6	9	8·4	7·8	7·2	6·6	6
2	24	22·8	21·6	20 4	19·2	18	16·8	15·6	14·4	13·2	12
3	36	34·2	32·4	30·6	28·8	27	25·2	23·4	21·6	19 8	18
4	48	45·6	43 2	40·8	38·4	36	33·6	31·2	28·8	26·4	24
5	60	57	54	51	48	45	42	39	36	33	30
6	72	68·4	64·8	61·2	57·6	54	50·4	46·8	43·2	39·6	36
7	84	79·8	75·6	71·4	67·2	63	58·8	54·6	50·4	46·2	42
8	96	91·2	86·4	81 6	76 8	72	67·2	62·4	57·6	52·8	48
9	108	102·6	97 2	91·8	86·4	81	75·6	70·2	64·8	59·4	54
10	120	114	108	102	96	90	84	78	72	66	60

Supposing it is desired to find the value of a house yielding Rs. 23 a month the deductions being 30 per cent. and the years' purchase 12½, the calculation will be as follows :—

		Rs.
Annual value of Rs. 20 a month at 30 per cent. deductions		168
Annual value of Rs. 3 at 30 per cent. deductions	+	25·2
Total annual value		193·2
	×	12·5
		2,415

The following table will also prove very useful in calculating valuations on the rental basis at the years' purchase given in it. For other numbers of years' purchase it is shorter to calculate as above.

TABLE No. III.

Table showing the value of a monthly rent of Re. 1 capitalised at the years' purchase given in the table with deductions varying from nil to 50 per cent.

	Basis of interest.				
	Per cent. 5	Per cent. 5½	Per cent. 6	Per cent. 7½	Per cent. 8
	Years' purchase.				
	20	18·1818	16·66	13·33	12·5
Deductions.					
Nil	240	218·1818	200	159·99	150
5	228	207·2727	190	151·99	142·5
10	216	196·3636	180	143·99	135
15	204	185·4545	170	135·99	127·5
20	192	174·5454	160	127·99	120
25	180	163·6363	150	119·99	112·5
30	168	152·7272	140	111·99	105
35	156	141·8181	130	103·99	97·5
40	144	130·9090	120	95·99	90
45	132	119·99	110	87·99	82·5
50	120	109·0909	100	79·99	75

Supposing it is desired to ascertain the valuation of a property yielding a total gross rent of Rs. 142 at 16⅔ years' purchase (on a 6 per cent. basis), the deductions being taken at 35 per cent., the calculation will be as follows :—

	Rs.
Monthly rent	142
	× 130
	18,460

It is impossible to calculate at 6½ per cent. or 7 per cent. in this simple manner as the tables cannot be worked out without an excessive number of decimal points.

Tables for calculating the value of land.

In valuing land separately it is usual to take a certain rate per cotta. Where an area comprises an uneven number of square feet the calculation is often intricate. The following tables can be used to calculate the value of any quantity of land at any rate per cotta.

TABLE No. IV.

Table showing the value of chittaks and square feet at any given rate per cotta.

(At Rs. 100 a cotta to Rs. 900 a cotta.)

Rate per cotta.		100.	200.	300.	400.	500.	600.	700.	800.	900
Chs.	S. ft.									
1	45	6·25	12·5	18·75	25	31·25	37·5	43·75	50	56·25
2	90	12·5	25	37·5	50	62·5	75	87·5	100	112·5
3	135	18·75	37·5	56·25	75	93·75	112·5	13 ·25	150	168·75
4	180	25	50	75	100	125	150	175	200	225
5	225	31·25	62·5	93·75	125	156·25	187·5	218·75	250	281·25
6	270	37·5	75	112·5	150	187·5	225	262·5	300	337·5
7	315	43·75	87·5	131·25	175	218·75	262·5	306·25	350	393·75
8	360	50	100	150	200	250	300	350	400	450
9	405	56·25	112·5	168·75	225	281·25	337·5	393·75	450	506·25
10	450	62·5	125	187·5	250	312·5	375	437·5	500	562·5
11	495	68·75	137·5	206·25	275	343·75	412·5	481·25	550	618·75
12	540	75	150	225	300	375	450	525	600	675
13	585	81·25	162·5	243·75	325	406·25	487·5	568·75	650	731·25
14	630	87·5	175	262·5	350	437·5	525	582·5	700	787·5
15	675	93·75	187·5	281·25	375	468·75	562·5	656·25	750	843·75
16	720	100	200	300	400	500	600	700	800	900

This table by the mere shifting of the decimal point will give the value not only of a certain number of chittaks at any given rate, but it will also give the value of any given number of square feet here expressed that can be divided by any of these factors. For instance if it is desired to find the value of 11 chittaks 37 square feet at Rs. 300 a cotta the calculation is as follows :—

		Rs.	Rs.	A.
1 chittaks at 300	equals ...	206·25		
3 sq. ft. at the same rate	„ ...	15		
		221·25	or 221	4

There remains 1 square foot which may either be ignored or if extreme accuracy is desired the value can be ascertained from the next table. Again 5 chittaks 29 square feet at Rs. 650—

		Rs.
5 chittaks	at 600 equals... ...	187·5
„	„ 50 „	15·625
27 square feet	„ 600 „ ...	22·5
„	„ 50 „ ...	1·875
		227·500

Or Rs. 227-8. There remains 2 square feet, the value of which can be taken from the next table.

TABLE No. V.

Table showing the value of ½-2½ square feet at Rs. 100 to Rs. 900 a cotta in annas.

Sq ft.	100.	200.	300	400.	500.	600.	700.	800	900.
½	1·11	2 22	3 33	4·44	5·55	6·66	7·77	8· 8	9·99
1	2·22	4·44	6·66	8·88	11·11	13·33	15·55	17·77	19·99
1½	3·33	6 66	9·99	13·33	16·66	19·99	23·33	26·66	29·99
2	4·44	8 88	13 33	17·77	22·22	26·66	31·11	35·55	39·99
2½	5·55	11 11	16 66	22·22	27 77	33·33	38·88	44·41	49·99

TABLE No. VI.

Annas in decimals of a Rupee		Pies in decimals of an anna.	
1	·0625	1	·083
2	·125	2	·16
3	·1875	3	·25
4	·25	4	·3
5	·3125	5	·416
6	·375	6	·5
7	·4375	7	·583
8	·5	8	·6
9	·5625	9	·75
10	·625	10	·83
11	·6875	11	·916
12	·75	12	1·0
13	·8125		
14	·875		
15	·9375		
16	1·0		

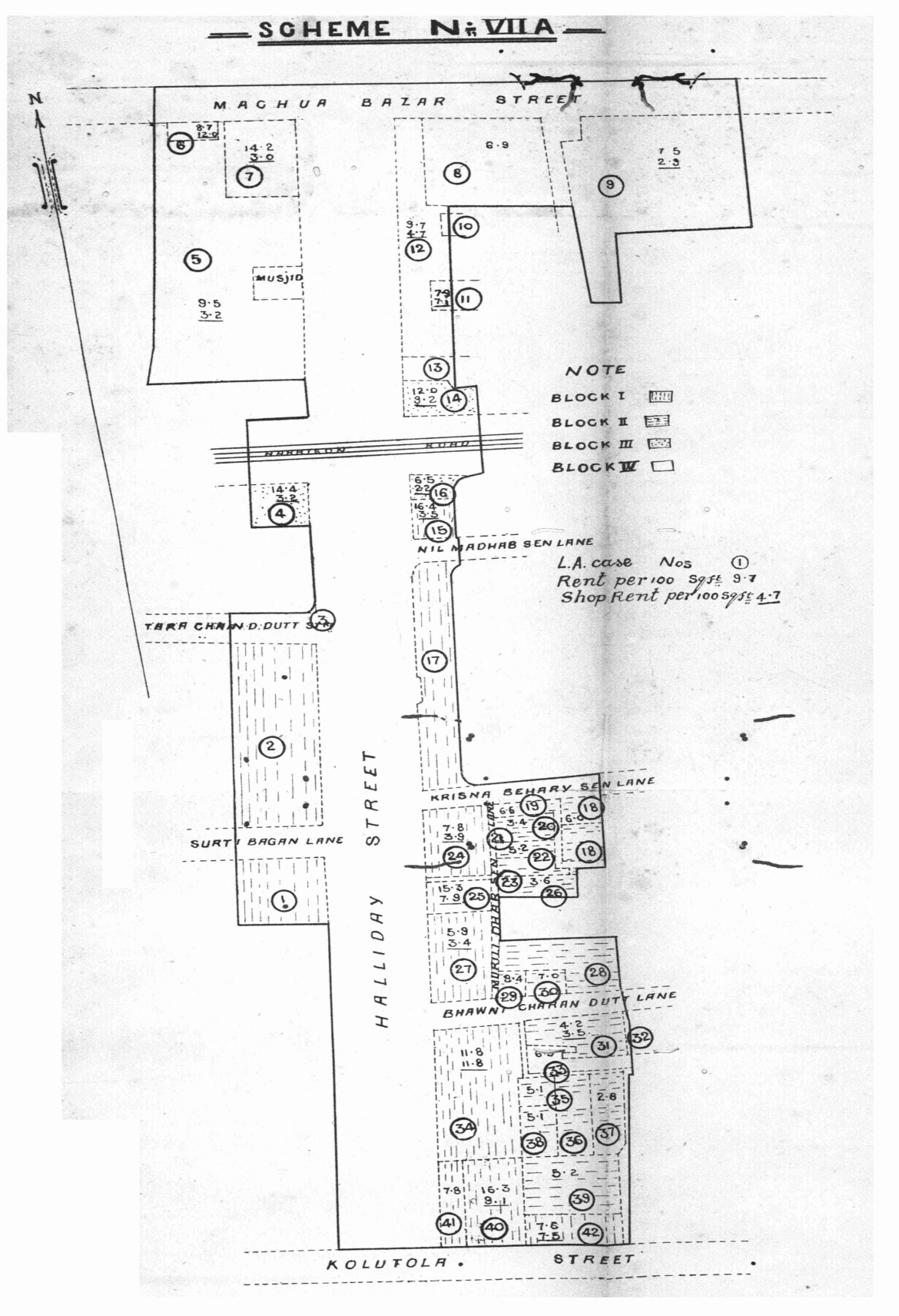
The use of these tables is obvious, but I give an example of a complete valuation by them.

4 cottas 5 chittacks 15 square feet at Rs. 300 a cotta.

			Rs.	Rs.	A.
4 cottas	equals	...	1,200		
5 chittacks	„	... +	93·75		
13·5 square feet	„	... +	5·625		
		=	1,299·375 or	1,299	6
1½ square feet	„	9·9 annas equal	+	0	10
		Total	=	1,300	0

In actual practice, unless the land was extremely valuable, I should ignore anything below 4·5 square feet taking the nearest multiple. In this case, the valuation can be written straight down from table No III.

SCHEME No. VIIA



INDEX.

	PAGES
Abandonment of acquisition	6, 121, 124
Abatement of revenue	17, 55
Abatement statement	65
Acceptance of award	58
" payment	58
Access	5, 36
Acquisition plan	9
Accounts	54
Additions to compensation	35
Adjournment of date for claims	12, 121
Administrators	49, 51
gents	57, 70, 71
greement	42, 47, 55, 62
greement by company	63
gricultural land	39
lienation, power of	42, 48, 49, 50
lteration in award	40
ppeal from award	3, 57-62
" " order rejecting reference	59
pplication for exemption	121
pplication for reference	58, 71
pportionment	15, 16, 41, 43, 57, 62, 129
rable land	45
rea	7, 15, 129
rrears of rent	39, 54
ttachment by Court	48, 55
ttendance, Collector's power to enforce	44
ward	3, 15, 70, 144
verage rent	25
ad debts	26
ars to reference	11, 58, 60
lts, valuation by	32, 137
oundaries in declaration	4
oundary disputes	7, 12, 16
uildings, valuation of	32, 137
urden of proof	129, 130
alcutta Corporation	2, 21, 58, 45

PAGES.

Calcutta Improvement Trust . . . . . 6, 16, 36, 38, 121.
Capitalised value of Government revenue . . 17, 18, 55
Cases 9, 63
Chaukidari chakran land 57
Churches 5
Claims 7, 8, 70
" by owner 9
" by tenant 10
" by occupier 10
" by mortgagee 10
Collection charges 26
Collector of the district 3, 4, 5
Collector, position of 1, 2, 61, 121
Commissioner 4, 5
" of Police, power to enforce surrender of land 46
Common passages 34, 134
Company 61, 63
Compensation, calculation of 21-39
Contract, persons competent to 55
Costs 15, 16, 39, 47, 61, 130
Court, Civil 2, 11, 32, 45, 60
Court fees 9, 36
Court of Wards 50
Crops 31, 36
Damages, enquiry as to 12
" for severance 36
" for loss of earnings . . . 36, 37, 130, 152
" caused by declaration . . . 39
" for sudden dispossession . . 45
" in preliminary enquiry . . 3
" for withdrawal from acquisition . . 6
" for delay in award 18
Dayabhaga school of law 49, 51, 53
Declaration 6
Deductions from compensation 35
" " rent 24, 26, 127, 135
Defence of references 60
Deposit, civil 46, 47, 57, 71
" revenue 57, 71
Depreciation 26, 32, 137
Disputes as to apportionment 62
area 7, 12, 16

PAGES.

Disputes as to compensation 3, 57, 62
" " title 41, 47
" " damage for temporary occupation . 63
Draft award 13
" declaration 3, 4, 5
Documents, Collector's power to order production of 44
Easements 13
Enquiry by Collector 12, 13, 20
Error in declaration 6
Estimates 3, 4
Evidence 13, 20, 44, 61, 126, 130, 131
Exchange of lands 55
Executors 16, 51, 53
Exemption, Act V of 1911 . . . . . 6, 121-124
Experts, evidence of 16, 133
Fair rent 24, 25, 35, 36, 135
Factory, acquisition of part of 5, 36, 44, 62
Fee, exemption 121
Ferries 34
Final report 65
Fisheries 34
Fixtures tenants' 12
Gazette, publication in 3, 6, 63
Graveyards 5
Guardians 16, 49, 50, 53
Hindu females 49, 53
House, acquisition of part of 5, 36, 44. 62
Huts 12, 53, 135, 137
Hypothetical building schemes 34
Identification of payees 54
Improvement Schemes Act V of 1911 . . . . 16, 39
Improvements 35
Indian Penal Code 11
Incumbrances 45
Injunctions by Court 7
Inspection of land acquisition offices 68-72
Interest 46
Insurance 26
Investment 56, 150
Joint family 41, 49
Land belonging to Government 6
" and Buildings valuation 32, 33
" registers 8, 54

PAGES.

Land valuation of 30, 31, 32
Licenses 37, 44
Limitation 11, 12, 59, 72, 133
Local Authority 2, 61
Lunatics 49, 52, 54
Magistrate, power to enforce surrender of land . 46
Mahomedan law 53
Maps 7, 46
Market value 14, 21, 31, 33
Matwalis 49, 52, 54
Measurement 7
Mines 5
Minors 16, 49, 50
Mitakshara school of law 49, 51, 53
Mortgagees 10, 16, 41
Mosques 5
Municipal assessment roll 8, 18
Notices 7, 8, 40, 54, 66, 148, 149
Notification 3, 6, 63
Numbering of cases 9
Oath, evidence on 13, 42
Objection to acquisition 11
Obstruction to preliminary enquiries . . . 3
,, to survey 7
Occupiers 36-38, 45
Offer by Collector 15, 131
Offers, evidence as to 14, 133
Office routine 63-66
Omission to make a claim 60
Order for acquisition 7
Order sheet 143
Payment 46-55
Persons interested 13
Plotting schemes 35
Potential value of land 31
Possession, taking of 44, 45
Post, notice sent by 8
Powers of attorney 57
Preliminary investigation 3, 8, 9
Presumption as to market value in Corporation cases 21
Process fees 61
Profits from land 22-31

PAGES.

Progress reports 65
Protest, payment under 54, 58, 59
Railways 5, 63, 65
Raiyats 42, 43
Reasons for award 20, 60
Receipts 54, 59, 71
Receivers 49, 52, 54
Reference 57-62
Reference, by Collector 44, 57, 62, 146
Do. by parties 7, 18, 57
Registers 65
Reinvestment in land 56
Religious buildings 5
Remission of revenue 17, 55
Rental valuation 7, 22-30 134
Rents 14, 18, 66, 67, 139, 140, 148
Repairs 26
Returns 65
Revenue 17, 55
Revised estimate 4
Roads 34
Salami 136
Sales 14, 18, 23, 66, 132, 136
Service of notices 7, 8, 40, 59
Service land 57
Settlement maps 7
Severance 5, 36, 137
Shebaits 16, 49, 52, 54
Sinking fund 26
Statements 66
Statistics, Collection of . . 66-68, 139, 140, 148, 151, 152
Statutory allowance 39, 136
Stridhan 53
Surplus lands 121
Survey 7
Tables, of capitalised value of a lease 152
,, of annual net rent 153
,, of years' purchase 154
,, of land value at given rates per cotta . . 155, 156
Tanks 31, 138
Taxes, municipal 26, 27, 45, 135
Temples 5
Temporary occupation 82

PAGES.

Temporarily-settled estates 5
Tenants' rights 38, 43, 54
Title, enquiry into 15, 36, 41, 47
Tombs 5
Trees 31
Tribunal, Calcutta Improvement Trust . . 2, 11, 15, 32, 40, 125
" Bombay 29
Trustees 49, 52, 54
Unit of acquisition 8
Urgency 45
Vacancies 26
Vacant land 30, 45
Valuation card 141
Waste land 45
Wells 31
Widows 49
Withdrawal from acquisition, notification of . . 6
Years' purchase 19, 27, 28, 29, 36, 127, 128, 134, 135, 152

PRINTED AT THE
BENGAL SECRETARIAT PRESS,
CALCUTTA.

B. S. Press—23-12-1916—1891J—1,000—F. T. R.